

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**April 6, 2006**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 6, 2006, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr., Chair; Darrell Downing, Vice-Chair; John W. McKay, Jr.; Bill Johnson (in @ 1:35 and out @ 4:21); Bob Aldrich; Elizabeth Bishop; M.S. Mitchell; Ronald Marnell; Hoyt Hillman; and Michael Gisick. Don Anderson; Denise Sherman; Bud Hentzen and Morris K. Dunlap were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Scott Dunakey, Associate Planner and Rose Simmering, Recording Secretary.

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#### **1. Approval of March 16, 2006 meeting minutes.**

No minutes to approve not mailed out.

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#### **❖ SUBDIVISION ITEMS**

#### **2. Consideration of Subdivision Committee recommendations from the meeting of March 23, 2006.**

##### **2-1. SUB2006-02: Final Plat – USD 385 ADDITION, located north of Central and on the west side of 159th Street East.**

**NOTE:** This is an unplatted site located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

#### **STAFF COMMENTS:**

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential.
- B. Municipal services are available to serve the site. Unless petitions for extensions are provided, in lieu of assessment fees are needed for sewer lateral and water main.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has approved the drainage plan.
- D. Additional right of way is required in the area of KTA bridge and fill. The applicant shall meet with County Engineering to determine the width of right-of-way needed for future bridge widening.

Additional right-of-way has been platted as requested.

- E. County Public Works recommends Wichita and Andover resolve which city will annex and maintain 159<sup>th</sup> St. E.
- F. Traffic Engineering has requested right/left turn lanes on 159<sup>th</sup> for the north entrance.
- G. City Engineering requests a petition for the paving of the north half of Sharon Lane.
- H. City/County Engineering needs to comment on the access controls. The plat proposes two openings along 159<sup>th</sup> St. East. Access controls are approved.
- I. Since drainage will be directed onto the Kansas Turnpike, a letter shall be provided from KTA indicating their agreement to accept such drainage.
- J. Provisions shall be made for ownership and maintenance of the proposed reserve. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.

- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To defer.

**JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (9-0).

- 2-2. **SUB 2005-133: Final Plat -- SYCAMORE POND ADDITION**, located south of 47<sup>th</sup> Street South and on the east side of Seneca.

**NOTE:** This is a replat of a portion of Angel Acres 2nd Addition in addition to unplatted property to the north.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan was approved subject to conditions.**
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. **City Engineering** and **City Fire Department** request a petition for paving improvements to the adjoining Sycamore and Osage in the South Seneca Gardens 2<sup>nd</sup> Addition to the south.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant

runs with the land and is binding on future owners and assigns.

- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**DOWNING** moved, **ALDRICH** seconded the motion, and it carried (9-0).

- 2-3. **SUB 2006-15: One-Step Final Plat -- DATER ADDITION,** located north of 37<sup>th</sup> Street North and on the east side of 167<sup>th</sup> Street West.

**NOTE:** This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "2030 urban growth area" by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Colwich Zoning Area of Influence.

**STAFF COMMENTS:**

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval. **The applicant need to either move the property line 100 feet north or contact Sedgwick County Code Enforcement for a waiver for the lagoon.**
- B. In accordance with the Urban Fringe Development Standards, the subdivider shall contact the City of Wichita to determine the financial feasibility of connecting the proposed subdivision to the city water system. If financially feasible, the subdivision shall be connected to Wichita's water system in accordance with City of Wichita standards.
- C. **City of Wichita Water and Sewer Department** requests a petition for future extension of sanitary sewer and City water services.

- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The applicant will be submitting a four-corner lot concept.**
- F. **County Engineering** needs to comment on the access controls. The plat denotes one opening along 167th St. West. **The access controls are approved.**
- G. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- H. The plat's text shall note the dedication of the street to and for the use of the public.
- I. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **The modification has been approved.**
- J. **GIS** has requested an abbreviation for the labeling of "167<sup>th</sup> Street West".
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

MITCHELL Has staff answered the questions that were raised at the Subdivision Committee meeting?

STRAHL County Code Enforcement had specified the need to move the property line 100 feet north or contact County Code Enforcement for a waiver for the lagoon. Wichita Water and Sewer Department requests a petition for future extension of sanitary sewer and City water services. County Engineering did allow a four-corner lot concept due to the minimal drainage of the site. County Engineering did approve the access controls along the arterial. One opening is proposed along 167th Street West, which is a current driveway.

MITCHELL Neil, have you received anything in writing from Code Enforcement for the exception to the 100 feet?

STRAHL No, I have not.

MITCHELL I noticed on Condition (I) is that the modification for the shape of the subdivision is not meeting the standard width-to-depth requirement. The thing that worries me was that when I suggested that the plat be moved north to get the 100-foot separation, I was told that would only leave 200 feet in the whole parcel. These are two brothers that own this land, they can use the 25-acre size to get a building permit on this site and plat it now, and then apply for another building permit on the remaining 20 acres which means we wind up with the improper separation between the lagoons and a lot arrangement which is contrary to good subdivision platting.

WARNER What is the alternative? Code Enforcement makes the decision whether or not this property needs to be moved 100 feet to the north?

MITCHELL That is my understanding.

GISICK Who signs the waiver?

STRAHL County Code Enforcement will sign the waiver for the location of the lagoon.

WARNER Mitch, you think this should not happen?

MITCHELL It is my opinion that this plat not be approved because it does not meet the normal standards and will set precedent for other locations in this vicinity, and the long narrow tract of land will permit at least one, maybe two building permits on plats that can't meet the shape of the plat.

WARNER You indicated that there are other long lots in the vicinity. Are there existing homes and lagoons presently on them? We have had a request to look at this item concerning the lagoon, and the request from the applicant to move the line 100 feet to the north.

MICHELLE WEBSTER, TERRA TECH LAND SURVEYING, INC., 22200 W. 63RD ST. SOUTH, VIOLA KS 67149 We could do that but the applicant asked that we split the frontage. As I said at the Subdivision Committee meeting, his brother plans to build a home next to his on the remaining 20 acres, and they wanted twin lagoons. That brother is also planning to share the driveway that is already there so that we don't have another driveway opening onto 167th Street West. To me it made more sense to twin the lagoons.

I talked to Glen Wiltse, County Code, before I even platted this configuration and ran it by him, and he said as long as we had an easement on record when the plat got recorded so that when any house built on the remaining piece would twin with this lagoon that was appropriate. We wouldn't need to ask for any waiver because the twin lagoon was appropriate and they allow it if you ask for it.

As far as the lot depth and the frontage, there are ways to make it more square and not so long and narrow, but as I brought up at the first meeting, the parent tract that we had to work with, this is all of the property they own. It is only about 412 feet of frontage by 1/2 mile deep. That is a spaghetti farm to begin with. The lot depth-to-width ratio that we ended up with for this plat is a lot better than we started with. This way we ensure that the building site is left. The 20 acres wraps around this like an "L" and also has 200 feet of frontage, which is another requirement of the Subdivision Regulations.

ALDRICH Did you talk to County Code?

WEBSTER Glen said a waiver is not necessary if we just put an easement covenant that says that this lagoon will be twinned with the lagoon on the other piece. We have not done that yet because we are still in the process of doing a boundary line re-tracement for the section, which is really bogged down because of an old reserve line, and there is like 40 feet of discrepancy of where the center of the section is.

BISHOP Could you define twinning the lagoons? Does that mean two lagoons side by side or two properties using the same lagoon?

WEBSTER The Health Department will not let two different homes use the same lagoon. They are independent lagoons but they have a extra wide partition between the holding cells of the pond, and the property line goes through that common wall between the lagoons, and the reason they don't let you put one large lagoon for two homes because if either sides fails it can be worked on and repaired without jeopardizing the other home's ability to use the facility.

BISHOP Is the property just to the north of the subject property platted?

WEBSTER No, it has a 20-acre exemption on it by right. They can get a building on it without platting.

BISHOP How do you know there is going to be a lagoon on that side?

WEBSTER They can put another system on there if they want to but the alternative is an alterative sewer system, which is quite a bit more expensive.

BISHOP So you are just projecting that will make sense?

GISICK The owner above on the top is the brother, so he is expected to build?

WEBSTER If they put a lagoon in there that is the place that it has to go, he can't say I changed my mind and I really don't want it here, and that is why I am going to have you move yours. This is where it is going to go. It is a covenant that goes on the 20-acre piece. I would like to clarify, I think Commissioner Mitchell has this impression that we encouraged this development, and now we are going in after the fact because it is easier to ask for permission. Then after the fact, before we were contacted by the Dater's, after this thing had already been built.

MITCHELL With respect to Item (A) do you believe that there needs to be a written waiver or some kind of limitation from Code Enforcement that the waiver that she discussed has been proven?

STRAHL Yes, and I can obtain that prior to us releasing the plat.

MITCHELL You know it is forthcoming?

STRAHL Again, I have not spoken with Tim Wagner since the Subdivision Meeting.

**MOTION:** To deny, due to failure to obtain written waiver for twin lagoons and the shape of the length and width of the lot.

**MITCHELL** moved, **ALDRICH** seconded.

**SUBSTITUTE MOTION:** To approve with respect to the requirements in Item (a) and require copies of the covenant be received prior to the plat being finalized and the Code Enforcement will provide the written waiver.

**MARNELL** moved, **JOHNSON** seconded.

BISHOP Commissioner Mitchell what is your objection to the plat?

MITCHELL Failure to obtain the waiver, and the fact that there is no way that the shape of this subdivision plat meets the standards.

BISHOP You mean the eastern portion of that can be built on and another lagoon can be placed on there possibly?

MITCHELL What she said is that they plan more than one lagoon adjacent to the present one.

BISHOP That would be on the other property, so if the remainder of the property should be used it would have to go with a twin lagoon.

**SUBSTITUTE MOTION carried 7-3. (BISHOP, ALDRICH, MITCHELL opposed)**

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**2-4. SUB 2006-16: One-Step Final Plat -- EMERALD BAY LIFT STATION ADDITION,** located south of 29<sup>th</sup> Street North and west of West Street.

**NOTE:** This is an unplatted site located within the City. A Conditional Use (CON 2006-06) for a Major Utility for a sanitary sewer lift station has been requested.

**STAFF COMMENTS:**

- A. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan was approved subject to conditions.**
- B. The plat denotes one opening along Emerald Bay. The final plat shall reference the dedication of access controls in the plat's text.
- C. Paving of Emerald Bay will be needed. A petition has been provided with the Emerald Bay Addition to the south.
- D. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- E. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- F. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- G. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- H. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- I. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate

agencies to determine any such requirements.

- J. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- K. Perimeter closure computations shall be submitted with the final plat tracing.
- L. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- M. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- N. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**DOWNING** moved, **ALDRICH** seconded the motion, and it carried (9-0).

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**2-5. DR 2006-04: Street Name Change From Armour Drive to Towne East Mall Drive.**

**APPLICANT:** City of Wichita, John Philbrick, 455 N. Main Street, 13th Floor, Wichita, KS 67202  
**LOCATION:** West of Rock Road and on the north side of Kellogg.  
**LEGAL DESCRIPTION:** Armour Drive as platted in the Kellogg Mall Addition and the Rockwood South 3rd Addition.  
**REASON FOR REQUEST:** To accomodate KDOT's requirements for highway signage in relationship to Towne East Square Mall.  
**CURRENT ZONING:** N/A

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**DOWNING** moved, **ALDRICH** seconded the motion, and it carried (9-0).

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❖ **PUBLIC HEARINGS – VACATION ITEMS**

**3-1. VAC 2006-07: Request to Vacate a Portion of a Platted Right-of-way.**

**APPLICANTS/AGENT:** DGL Investments Poe & Associates  
**LEGAL DESCRIPTION:** Generally described as the platted 20-foot wide alley ROW located between Lots 120 & 122, all dedicated in the Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas  
**LOCATION:** Generally located north of Douglas Avenue, between Market and Broadway Avenues (WCC #VI)  
**REASON FOR REQUEST:** Build a parking garage  
**CURRENT ZONING:** The site is a platted, developed alley, all abutting and adjacent properties are zoned "CBD" Central Business District

The applicant is requesting vacation of the approximately 130-foot long (x) 20-foot wide portion of the platted alley as described. This portion of the alley is the south most portion of a platted alley that runs from 1<sup>st</sup> Street to Douglas Avenue, north to south. This portion of the platted alley also lies below an east –west alley that provides access to Market and Broadway Avenues, thus vacating this described portion of the platted north-south alley will not result in a dead end alley. There are no utilities, manholes, sewer or water lines in this portion of the alley. There is underground storm water drainage in the alley. The Greiffenstein's Original Old Town Addition was recorded with the Register of Deeds October 1, 1870.

**Note:** At the MAPC's March 16, 2006 meeting several property owners abutting the remaining north portion of the alley (located north of the east – west alley that intersects the north –south alley; the subject site is the south portion of the north – south alley) expressed concerns about the ability of trucks serving their buildings to negotiate the 90 degree turn of the remaining intersecting 20-foot wide

alleys. The MAPC proposed a deferral until its April 6 meeting, before making recommendation on the request, noting that the turning radius required by City Fire would serve as the minimum standard. All participants in the case agreed to the deferral.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, City Fire, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted alley ROW, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
- 1) That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 23, 2006 which was at least 20 days prior to this public hearing.
  - 2) That no private rights will be injured or endangered by the vacation of the above-described portion of platted alley ROW and the public will suffer no loss or inconvenience thereby.
  - 3) In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted alley ROW described in the petition should be approved with conditions;
- (1) There is a 24-inch storm water line in the portion of alley proposed for vacation. Retain the alley as an easement until the City's Storm Water Department has received plans for review and approval. If relocation or improvements to Storm Water's utilities are needed they will be per City standards and at the applicant's expense. If necessary provide a guarantee for relocation of storm water utilities. These conditions must be completed prior to the case going to WCC for final action.
  - (2) The bricks in the alley will be returned to the City's Public Works Department.
  - (3) The alley entrance onto Douglas is to remain open and it will be constructed to City standards and at the applicant's expense. Provide staff with a guarantee for the reconstruction of the entrance onto Douglas Avenue and the reconstruction of the sidewalk. These conditions must be completed prior to the case going to WCC for final action.
  - (4) City Fire has determined the minimum turning radius they need for operational purposes can be met with the current 20-foot wide alleys at their intersection, north of the subject site. The applicant shall apply for and post, at their expense, "Fire Lane" signs to be posted in the remaining north – south and east – west alleys as directed by Fire Prevention. No vehicular access onto the remaining alleys from the proposed parking garage, vehicular access will be from Douglas Avenue. Fire requires a standpipe to be installed in the proposed parking garage.
  - (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
  - (6) All improvements shall be according to City standards and at the applicant's expense.
  - (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) There is a 24-inch storm water line in the portion of alley proposed for vacation. Retain the alley as an easement until the City's Storm Water Department has received plans for review and approval. If relocation or improvements to Storm Water's utilities are needed they will be per City standards and at the applicant's expense. If necessary provide a guarantee for relocation of storm water utilities. These conditions must be completed prior to the case going to WCC for final action.
- (2) The bricks in the alley will be returned to the City's Public Works Department.
- (3) If the alley entrance onto Douglas Avenue is to be closed it will construct to City standards and at the applicant's expense. Provide staff with a guarantee for the closure of the alley return onto Douglas and for continuation of the curb and reconstruction of the sidewalk. If the alley entrance onto Douglas is to remain open it will constructed to City standards and at the applicant's expense. Provide staff with a guarantee for the entrance onto Douglas Avenue and the reconstruction of the sidewalk. These conditions must be completed prior to the case going to WCC for final action.
- (4) City Fire will determine the minimum turning radius. That minimum turning radius will be applied to the southeast corner of the intersection of the north – south alley and the east – west alley, which abuts the existing parking lot owned by the Kress Energy Center LLC. This corner represents the only opportunity to expand the existing turning radius, if needed, for emergency (public safety) and commercial vehicles.
- (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.



- (6) All improvements shall be according to City standards and at the applicant's expense.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

LONGNECKER I believe the applicant would like to make a statement in regards to an additional agreed upon condition, therefore I'll skip over a full presentation of the case, unless you want me to make one.

TIM AUSTIN, POE & ASSOCIATES The only thing we wanted to add that may not be in the staff report is that on the southeast side of the north/south alley, where it intersects with the east-west alley, running parallel and between the north-south alley and an existing parking garage for the old Bank IV building, there are parking stalls running the length of the parking garage. We have agreed with the neighbors who abut and use the remaining alleys to lease the southern most parking stall so as to allow for additional width at the "T" intersection, and thus opening up more turning radius for traffic that serves their businesses.

BOB KAPLAN I was asked by J.P. Weigand to review the matter and to make a recommendation. I have worked with Mr. Austin and Mr. Longnecker in addressing our concerns in regards to the available turning radius at the south "T" alley intersection, which allows access onto Broadway and Market from those remaining 20-foot wide alleys. Our concerns were the ability for truck and service vehicles being able to navigate the 90-degree angle turn. I believe that Fire's ability, as noted on staff's report, to service the area with their equipment using these alleys will satisfy my clients when it is coupled with additional 8-feet of width the length of the south parking space on the east side of the remaining alley, as referenced by Mr. Austin. That being said, I simply want to confirm in the public hearing that our consent is subject to the acquisition of the additional space created by the acquisition of the south parking space located on the northeast corner of the "T" intersection of the remaining alleys. We would need a copy of that lease agreement before this case goes to Council.

**MOTION:** To approve subject to staff, Subdivision Committee recommendation and the additional condition as referenced by Mr. Kaplan.

**ALDRICH** moved, **BISHOP** seconded the motion, and it carried (10-0).

**3-2. VAC 2006-08: Request to Vacate Street Right-of-Way.**

**APPLICANTS:**

Gloria Contreras, Charles & Edith Dvorak,  
Michael & Laura Pivonka, Fayburn & Florence Parish

**LEGAL DESCRIPTION:**

(B) The undeveloped portion of 24<sup>th</sup> Street North (created by condemnation ordinance #22-783) abutting the south sides of Lots 12 & 13, Block B, Community Addition, the north sides of Lots 1 & 21, Block D, Community Addition, abutting the Burns Avenue ROW on its west side and the Woodland Avenue ROW on east side, as recorded with Wichita, Sedgwick County, Kansas

**LOCATION:**

Generally located south of the 25<sup>th</sup> Street North & west of Arkansas Street intersection, more specifically southwest of Schell Park at 24<sup>th</sup> Street North & Woodland. (WCC #VI)

**REASON FOR REQUEST:**

Undeveloped ROW, revert to private use

**CURRENT ZONING:**

Site and surrounding properties are zoned "SF-5" Single-family residential

The applicants are requesting consideration to vacate the described undeveloped section of the 24<sup>th</sup> Street North ROW. That approximately 47-foot wide (x) 270-foot long section is located between, west to east, Burns Avenue and Woodland Avenue. Between Burns and Woodland Avenues, 24<sup>th</sup> Street North abuts two residential lots on its north side and two residential lots on its south side. All of the abutting property owners have signed the application and petition to vacate the sections of 24<sup>th</sup> Street North as previously described.

The section of 24<sup>th</sup> Street North proposed to be vacated was originally shown as an "Exception" on the Community Addition plat, which was recorded January 25, 1954. The plat's text does not mention any of the "Exceptions" shown on the plat. The City of Wichita's Board of Commissioners adopted condemnation ordinance #22-783, on April 3, 1957; this created the described portion of the 24<sup>th</sup> Street North ROW. This portion of 24<sup>th</sup> Street North was never developed, except for a curb cut and drive entrance (paved) onto Woodland. The ROW is currently grass and trees with the abutting property owners using it as access to garages or for vehicle parking/storage. 24<sup>th</sup> Street North is classified as a residential road. The portion of ROW proposed to be vacated is 47-feet wide and does not match the abutting and platted 24<sup>th</sup> Street's 60-foot width. There are sewer lines crossing, north to south, the 24<sup>th</sup> Street North ROW, but no water. Water & Sewer has requested that 20-foot of the ROW, 10-foot on either side of the sewer lines, be retained as a sewer easement, if the whole vacated ROW is not retained as an easement. There are utility poles in the ROW; retention of a portion of the ROW as easement or relocation of the utilities would be per the franchised utilities recommendation, if the whole vacated ROW is not retained as an easement. Setbacks are per the current UZC for the "SF-5" zoning district, but would become interior side yard setbacks, per the current UZC (6-foot), and would move with the new property lines created by the vacated ROW, if it is approved and the recommended conditions are met.

The portion of 24<sup>th</sup> Street North between Burns and Salina Avenues, the next block west of the subject site, was approved for vacation (VAC2004-18), with conditions, July 15, 2005 by the WCC. This portion of 24<sup>th</sup> Street North was created by the same "Exception" on the Community Addition plat and subsequent condemnation ordinance #22-783, as the subject site.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the 24<sup>th</sup> Street ROW, created by condemnation ordinance #22-783, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of the street ROW created by condemnation ordinance and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the street ROW created by condemnation ordinance #22-783, described in the petition should be approved with conditions;
1. Vacate that portion of 24<sup>th</sup> Street North between Woodland-Burns, abutting Lots 12 & 13, Block B (north) and Lots 1 & 21, Block D (south), all in the Community Addition. The vacation request will not proceed to the WCC until all listed conditions are met.
  2. Per the recommendation of the public and franchised utilities, retain a 20-foot portion of the vacated ROW as utility easement(s), where public and franchised utilities are located or retain the whole vacated ROW as an easement. If retaining 20-feet of the vacated ROW as easement for each utility in it, provide a survey for the location of the public and franchised utilities and provide the metes and bounds description of each easement on a word documents for staff.
  3. Dedicate by separate instrument(s) an additional 2-feet, per abutting lot to the vacated 24<sup>th</sup> Street North ROW, to the platted 16-foot utility easement, north-south, located between Lots 1 & 21, Block D and Lots 12 & 13, Block B, all in the Community Addition.
  4. Setbacks will be the current UZC's interior side yard setbacks.
  5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.
  6. All improvements shall be according to City standards, including any driveways from private property onto public ROW; the Woodland intersection. If needed provide staff with a guarantee for construction of the drive(s) to City standards. If closing the drive onto Woodland, provide staff with a guarantee for continuation of curbing.
  7. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate that portion of 24<sup>th</sup> Street North between Woodland-Burns, abutting Lots 12 & 13, Block B (north) and Lots 1 & 21, Block D (south), all in the Community Addition. The vacation request will not proceed to the WCC until all listed conditions are met.
2. Per the recommendation of the public and franchised utilities, retain a 20-foot portion of the vacated ROW as utility easement(s), where public and franchised utilities are located or retain the whole vacated ROW as an easement. If retaining 20-feet of the vacated ROW as easement for each utility in it, provide a survey for the location of the public and franchised utilities and provide the metes and bounds description of each easement on a word documents for staff.
3. Dedicate by separate instrument(s) an additional 2-feet, per abutting lot to the vacated 24<sup>th</sup> Street North ROW, to the platted 16-foot utility easement, north-south, located between Lots 1 & 21, Block D and Lots 12 & 13, Block B, all in the Community Addition.
4. Setbacks will be the current UZC's interior side yard setbacks.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense.

6. All improvements shall be according to City standards, including any driveways from private property onto public ROW; the Woodland intersection. If needed provide staff with a guarantee for construction of the drive(s) to City standards. If closing the drive onto Woodland, provide staff with a guarantee for continuation of curbing.
7. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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**3-3. VAC 2006-09: Request to Vacate Multiple Encroachments into Platted Setbacks.**

**APPLICANTS/OWNERS:** Steven C Berber

**LEGAL DESCRIPTION:** Generally described as approximately 36.29-feet (the deepest point of a garages/shop's length of 41.98-feet) of the platted 50-foot setback that runs parallel to Kingsbury Lane and the north lot line of Lot 3, and 7.39-feet (the deepest point of a single-family residence's length of 50.46-feet) of the platted 50-foot setback that runs parallel to Annapolis Avenue and the east lot line of Lot 3, all in Block 15, the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located north of 55<sup>th</sup> Street South, east of 167<sup>th</sup> Street West, on the southeast corner of Kingsbury Lane & Annapolis Avenue.  
(BOCC #3)

**REASON FOR REQUEST:** Remove existing encroachments

**CURRENT ZONING:** Site and all property in the area are zoned "RR" Rural Residential.

The applicant is constructing a 40.2-foot (x) 41.98-foot garage/shop on the site where it appears that a garage/shop had previously stood (see County 2000 aerial). County OCI inspection of the garage/shop revealed the building was encroaching into the north platted 50-foot street side yard setback that runs parallel to Kingsbury Lane. The encroachment left the garage/shop 13.71-feet from the street side yard property line. A subsequent survey of the site also showed encroachment of the primary residence into the east platted 50-foot front yard setback that runs parallel to Annapolis Avenue. The encroachment left the residence 42.61-feet from the front yard property line. The survey also showed a shed covering the site's well to be completely in the same setback.

Per the Unified Zoning Code (UZC) the "RR" zoning district has a minimum 30-foot front yard setback and a minimum 20-foot street side yard setback. If the site's front yard setback was per the UCZ, 30-feet, the residence would not be encroaching; currently 42.61-feet from the front yard property line. If the site's street side yard setback were per the UCZ, 20-feet, the residence would be encroaching. The UZC allows, via an Administrative Adjustment, a 20% reduction of front, side and rear yard setbacks that have been established by the UZC. A 20% reduction of the UZC's 20-foot street side yard setback leaves it at 16-feet, which means the garage/shop would still be encroaching; currently 13.71-feet from the street side yard property line. If the street side yard setback was per the UZC, the applicant would have to apply for a variance to remove the encroachment, which is self induced.

There are no public utilities in the setbacks. The site is served by well and septic. The K-42 Estates Addition was recorded with the Register of Deeds July 21, 1969.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from County Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of this portion of platted 50-foot setbacks as described.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Derby Reporter, of notice of this vacation proceeding one time March 16, 2006, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted setbacks and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted 50-foot setbacks, described in the petition should be approved with conditions:
  1. Vacate the only that portion of the platted 50-foot street side setback, running parallel to the north lot line of Lot 3, Block 15, as recorded with Wichita, Sedgwick County, Kansas, where the garage /shop encroaches. No expansion is allowed on the

current structure. If 50% or more of the current structure is destroyed, it cannot be rebuilt on this site and the 50-setback line will be reinstated. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.

2. Vacate only that portion of the platted 50-foot setback, running parallel to the east lot line of Lot 3, Block 15, as recorded with Wichita, Sedgwick County, Kansas, where the primary residence encroaches. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.
3. If the shed housing the site's water well is a permanent structure, vacate only that portion of the setback where the shed is located. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
5. All improvements shall be according to County Standards, including all the required County permits and inspections.
6. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the only that portion of the platted 50-foot street side setback, running parallel to the north lot line of Lot 3, Block 15, as recorded with Wichita, Sedgwick County, Kansas, where the garage /shop encroaches. No expansion is allowed on the current structure. If 50% or more of the current structure is destroyed, it cannot be rebuilt on this site and the 50-setback line will be reinstated. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.
2. Vacate only that portion of the platted 50-foot setback, running parallel to the east lot line of Lot 3, Block 15, as recorded with Wichita, Sedgwick County, Kansas, where the primary residence encroaches. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.
3. If the shed housing the site's water well is a permanent structure, vacate only that portion of the setback where the shed is located. Provide staff will a metes and bounds legal of the area encroaching on a Word document, via e-mail.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
5. All improvements shall be according to County Standards, including all the required County permits and inspections.
6. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

**3-4. VAC 2006-10: Request to Vacate a Portion of a Platted Sewer and Utility Easement.**

**OWNER/APPLICANT:** Dillon Real Estate Co., Inc.

**AGENT:** Pickering Inc., c/o Cara Martin, PE

**LEGAL DESCRIPTION:** Generally described as a portion of the 20-foot wide sewer easement dedicated by separate instrument (Film 1161, Page 1005) located on Lot 4, Chadsworth Commercial 2<sup>ND</sup> Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located on the northeast corner of the Maize Road – 21<sup>st</sup> Sreet North intersection (WCC #V)

**REASON FOR REQUEST:** Proposed westward expansion of existing building

**CURRENT ZONING:** The subject property and adjacent southern properties are zoned "LC" Limited Commercial. Abutting northern property is zoned "LC" and "SF-5" Single-family Residential. Adjacent property west of the site is zoned "GC" General Commercial and "LC". Property abutting the east of the site is zoned "SF-5". The site is part of CUP DP-204

The applicant proposes to vacate a portion of the 20-foot sewer easement dedicated by separate instrument, as shown on the applicant's exhibit. The easement does have water and sewer in it. The applicant's exhibit also shows a proposed a 10-foot water and 10-foot sewer easement to protect relocated utilities. The applicant has agreed to provide Public Works with the standard 20-foot wide replacement easements. There is a platted 100-foot building setback line that appears to run parallel to a proposed replacement easement; it will remain in effect. The site is part of CUP DP-204. The Chadsworth Commercial 2<sup>nd</sup> Addition was recorded with the Register of Deeds August 14, 1995.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the easement dedicated by separate instrument, as described, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
- 1) That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  - 2) That no private rights will be injured or endangered by the vacation of the above described easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
  - 3) In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the easement dedicated by separate instrument described in the petition should be approved with conditions:
- (1) Provide Staff with a copy of any required additional easements (with original signatures) dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities. Replacement easements will be the City standard of 20-feet in width. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
  - (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities with any needed plans for review for location of utilities. Provide a guarantee/petition for the relocation of the water and sewer line and manholes.
  - (3) Retain the easements until all utilities have been relocated (or provide a guarantee for relocation of the utilities that has been accepted by the City) and the new easements for the relocated utilities have been recorded with the Register of Deeds.
  - (4) All improvements shall be according to City Standards.
  - (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of any required additional easements (with original signatures) dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities. Replacement easements will be the City standard of 20-feet in width. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities with any needed plans for review for location of utilities. Provide a guarantee/petition for the relocation of the water and sewer line and manholes.
3. Retain the easements until all utilities have been relocated or a guarantee for relocation of the utilities has been accepted by the City and the new easements for the relocated utilities has been recorded with the Register of Deeds.
4. All improvements shall be according to City Standards.
5. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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**3-5. VAC 2006-11: Request to Vacate a Platted Easement on Multiple Lots.**

**OWNER/APPLICANT:** Twenty-first Street Growth LLC

**AGENT:** MKEC Engineering Consultants Inc., c/o Greg Allison

**LEGAL DESCRIPTION:** The platted 10-foot utility easement, located on the north 10 feet of Lots 49-53, inclusive, all in Block 1, Hawthorne Third Addition, Wichita, Sedgwick County, Kansas, EXCEPT the West 5 feet of Lots 49 and 53 thereof, AND EXCEPT, the East 5 feet of Lot 50 thereof.

**LOCATION:** Generally located north of 21<sup>st</sup> Street North & east of 127<sup>th</sup> Street East, east of Williamsgate Street, on the north side of Ayesbury Street. (WCC #II)

**REASON FOR REQUEST:** Proposed relocation of easement

**CURRENT ZONING:** The subject property, all abutting and adjacent properties are zoned "SF-5" Single-family Residential.

The applicant proposes to vacate the platted 10-foot utility easement, as described and shown on the exhibits. The applicant's exhibit also shows a proposed 10-foot replacement easement located in Reserve "H", which abuts and runs parallel to the north side of the subject lots. The proposed replacement easement abuts and runs parallel to a 50-foot KANEB pipeline easement, which occupies most of Reserve "H". Per the plat's text for the Hawthorne Third Addition, " Reserve..."H"... is platted for drainage, utilities in designated locations, irrigation, landscaping, berming, monuments, sidewalks, and open spaces." There is also language in the plat's text about the homeowners association being responsible for maintenance and repair of the reserve. There are no utilities, manholes, sewer or water lines in the easement. The UZC's rear yard building setback line of 20-feet for the lots' "SF"-5" zoning will remain in effect. There will be no encroachment into the platted Reserve "H". The Hawthorne Third Addition was recorded with the Register of Deeds August 30, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted utility easement with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above described platted easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions:
1. Provide Staff with a copy of any required additional easements (with original signatures) dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
  2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities with any needed plans for review for location of utilities.
  3. Retain the easements until all utilities have been relocated or a guarantee for relocation of the utilities has been accepted by the City or franchised utilities and the new easements for the relocated utilities has been recorded with the Register of Deeds.
  4. All improvements shall be according to City Standards.
  5. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of any required additional easements (with original signatures) dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities with any needed plans for review for location of utilities.
3. Retain the easements until all utilities have been relocated or a guarantee for relocation of the utilities has been accepted by the City or franchised utilities and the new easements for the relocated utilities has been recorded with the Register of Deeds.
4. All improvements shall be according to City Standards.
5. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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**3-6. VAC 2006-12: Request to Vacate a Portion of Platted Setback.**

**APPLICANTS/OWNERS:** Phyllis A James

**AGENT:** TNT Construction

**LEGAL DESCRIPTION:** Beginning 12-feet south of the north lot line of Lot 9 for a distance of 12-feet, the west 5-feet of the of the platted 30-foot setback that runs parallel to Dellrose Avenue and the east lot line of Lot 9, all in Edgetown Park Addition, as recorded with Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located west of Oliver Avenue, south of Mount Vernon, and on the west side of Dellrose Avenue.  
(WCC #III)

**REASON FOR REQUEST:** Addition to residence

**CURRENT ZONING:** Site and all property in the area are zoned "SF-5" Single-family Residential.

The applicant proposes to remodel the kitchen of the single-family residence, which will extend the kitchen 5-feet into the platted 30-foot front yard setback, as described. The "SF-5" zoning district has a minimum 25-foot front yard setback, which equals what the applicant is proposing to vacate. There are no utilities, manholes, sewer or water lines in the platted front yard setback. The Edgetown Park Addition was recorded with the Register of Deeds February 17, 1937.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of this portion of the platted 30-foot front yard setback, as described and with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted front yard setback and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted 30-foot front yard setback, described in the petition should be approved with conditions:
1. Vacate the west 5-feet of the platted 30-foot front yard setback, as described.
  2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
  3. All improvements shall be according to City standards.
  4. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the

Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the west 5-feet of the platted 30-foot front yard setback, as described.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicant's expense.
3. All improvements shall be according to City standards.
4. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

**3-7. VAC 2006-13: Request to Vacate a portion of Platted Street Right-of-Way.**

**APPLICANTS:** Inter-Faith Villa Courts c/o Sam Muyskens

**AGENT:** Baughman Company, P.A. c/o Phil Myer

**LEGAL DESCRIPTION:** Generally described as the south 17-feet of 9<sup>th</sup> Street North between Market Street (west) and the platted 20-foot alley (east), a distance of approximately 131.98-feet, and the west 4-feet of the platted 20-foot alley, beginning at its north intersection of 9<sup>th</sup> Street North and going south for approximately 56.5-feet (see legal), all in the Munger's Original Town of Wichita plat, Sedgwick County, Kansas.

**LOCATION:** Generally located southeast of the Market Street – 9<sup>th</sup> Street North intersection (WCC #VI)

**REASON FOR REQUEST:** Existing encroachment

**CURRENT ZONING:** The site is platted street and alley right-of-ways. The abutting southern property, which is the site of the existing encroachment, is zoned "B" Multifamily Residential, as are the adjoining western and northern properties. The eastern abutting property is zoned "LC" Limited Commercial.

The Stoner Apartments were built in 1909 on Lots 138 & 140, the Munger's Original Town of Wichita plat. The Stoner encroaches into the street and alley ROWs as described. The Stoner has been deemed eligible for historical registration and the Historical Preservation Planner has made application. Removing the Stoner from the described ROWs is essential to this process. This portion of 9<sup>th</sup> Street North, between Broadway Avenue (east) and Water Street has had at least seven (7) approved vacations of its ROW, from 1959 - 2001. There are utilities, manholes and sewer line in this portion of the 9<sup>th</sup> Street and alley ROWs. This portion of 9<sup>th</sup> Street is classified as a residential street and the proposed vacation does not reduce its ROW to a substandard width. The Munger's Original Town of Wichita plat was recorded March 25, 1870.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted street and alley ROWs, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted street and alley right-of-ways and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted 9<sup>th</sup> Street and alley ROWs as described in the petition should be approved with conditions:



1. Provide staff with a restrictive covenant tying and binding Lots 138 & 140, the Munger's Original Town of Wichita plat to the abutting approved vacated portions of the platted 9<sup>th</sup> Street North ROWs. Provide Planning with a legal description of the approved vacated portions of the platted 9<sup>th</sup> Street North and platted alley ROWs on a Word document via e-mail.
2. There are no platted setbacks on Lots 138 & 140, the Munger's Original Town of Wichita plat, which is the site of the Stoner Apartments, but there are setbacks that have been established by the Unified Zoning Code. Any setbacks, which the Stoner may be encroaching into after approval of the vacation case, can be addressed by either an Administrative Adjustments or as a Variance.
3. .
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
5. All improvements shall be according to City Standards.
6. Provide Staff with a contingent alley dedication, effective upon the removal of the Stoner Apartment building.
7. Retain a portion of the vacated ROWs as needed as easements
8. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide staff with a restrictive covenant tying and binding Lots 138 & 140, the Munger's Original Town of Wichita plat to the abutting approved vacated portions of the platted 9<sup>th</sup> Street North ROW. Provide Planning with a legal description of the approved vacated portions of the platted 9<sup>th</sup> Street North and platted alley ROWs on a Word document via e-mail.
2. There are no platted setbacks on Lots 138 & 140, the Munger's Original Town of Wichita plat, which is the site of the Stoner Apartments, but there are setbacks that have been established by the Unified Zoning Code. Any setbacks, which the Stoner may be encroaching into after approval of the vacation case, can be addressed by either an Administrative Adjustments or as a Variance.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
4. All improvements shall be according to City Standards.
5. Provide Staff with a contingent alley dedication, effective upon the removal of the Stoner Apartment building.
6. Retain a portion of the vacated ROWs as needed as easements.
7. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

**3-8. VAC 2006-14: Request to Vacate a Portion of a Platted Alley.**

**APPLICANTS/AGENT:**

The Anthony Family Shelter c/o Janet Pape  
Spangenberg Phillips Architects c/o Mike Decker

**LEGAL DESCRIPTION:**

The platted 14.25-foot wide alley ROW located between Lots 15 – 24 all dedicated in the Mathewson 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:**

Generally located between 1<sup>st</sup> and 2<sup>nd</sup> Streets and Ohio and Indiana Avenues (WCC #1).

**REASON FOR REQUEST:**

Revert to private property for redevelopment of site.

**CURRENT ZONING:**

The site is a platted, developed alley, all abutting and adjacent properties are zoned "LI" Limited Industrial

The applicant is requesting vacation of the approximately 250-foot long (x) 14.25-foot wide portion of the platted alley as described. This portion of the alley is the north most portion of a platted alley that runs from 1<sup>st</sup> Street to 2<sup>nd</sup> Street. The applicant plans to

redevelop their property, which abuts both sides of the portion of the alley they propose to vacate. The applicant is also proposing to dedicate 24-feet of ROW (on the north side of Lot 13, which is owned by the applicant) to provide access to Ohio Avenue, thus preventing the alley from becoming a dead end. There are utilities, manholes and sewer line in this portion of the alley. The Mathewson 3<sup>rd</sup> Addition was recorded with the Register of Deeds May 4, 1886.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted alley ROW, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 16, 2006 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted alley ROW and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted alley ROW described in the petition should be approved with conditions:
1. Retain the alley as an easement.
  2. Dedicate, by separate instrument, 5.75-feet of additional easement, the length of the vacated alley. This must be provided to Staff prior to the case going to WCC for final action.
  3. Dedicate, by separate instrument, 24-feet of right-of-way, on the north side of Lot 13, Mathewson 3<sup>rd</sup> Addition, to provide access from the remaining alley ROW to Ohio Avenue. This must remain open at all times and be completely clear of any obstructions, including no parking. This dedicated ROW must be constructed with concrete, per City Standards. Provide Staff with a guarantee to ensure the construction of the dedicated ROW and its entrance onto Ohio. These must be provided to Staff prior to the case going to WCC for final action.
  4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
  5. All improvements shall be according to City Standards. If the drive onto 2<sup>nd</sup> Street is to remain open it must be constructed to City Standards and at the owner's expense. If the alley is to be closed, the continuation of the curbing and reconstruction of the sidewalk must be to City Standards and at the owner's expense. Provide the City with a guarantee/petition for these improvements. These must be provided to Staff prior to the case going to WCC for final action.
  6. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Retain the alley as an easement.
2. Dedicate, by separate instrument, 5.75-feet of additional easement, the length of the vacated alley. This must be provided to Staff prior to the case going to WCC for final action.
3. Dedicate, by separate instrument, 24-feet of right-of-way, on the north side of Lot 13, Mathewson 3<sup>rd</sup> Addition, to provide access from the remaining alley ROW to Ohio Avenue. This must remain open at all times and be completely clear of any obstructions, including no parking. This dedicated ROW must be constructed with concrete, per City Standards. Provide Staff with a guarantee to ensure the construction of the dedicated ROW and its entrance onto Ohio. These must be provided to Staff prior to the case going to WCC for final action.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
5. All improvements shall be according to City standards and at the applicant's expense. If the drive onto 2<sup>nd</sup> Street is to remain open it must be constructed to City Standards and at the owner's expense. If the alley is to be closed, the continuation of the curbing and reconstruction of the sidewalk must be to City Standards and at the owner's expense. Provide the City with a guarantee/petition for these improvements. These must be provided to Staff prior to the case going to WCC for final action.
6. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to staff and Subdivision Committee recommendation.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (10-0).

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SCHLEGEL Makes announcement that CUP2006-06 and ZON2006-07, Stonebridge CUP, will not be heard today as previously advertised.

❖ **PUBLIC HEARINGS**

4. **Case No.: ZON2006-05** – Eck Properties c/o Les Eck (Owner/Applicant); Poe & Associates c/o Tim Austin (Agent) Request Zone change from “SF-5” Single-family Residential to “GI” General Industrial on property described as;

The west 360 feet of the following described property:

The N1/2 of the SE1/4 of the SE1/4 of Sec. 29, Twp. 26-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, lying west of the west right-of-way line of US Highway 81, except a tract beginning at the intersection of the west right-of-way line of the new U.S. Highway No. 81 and the north line of the SE1/4 of the SE1/4 of Sec. 29, Twp. 26-S, R-1-E; thence west, along the north line of said SE1/4 of the SE1/4, 801.8 feet to the center of drainage ditch; thence southeasterly, along the center of said ditch to a point which is 200 feet south of the north line of said SE1/4 of the SE1/4; thence east, parallel with said north line 805.5 feet to the west right-of-way line of said highway; thence northwesterly, along said right-of-way, 200.95 feet to the place of beginning. Generally located West of Broadway and south of I-235 (3851 and 3901 N. Broadway).

**BACKGROUND:** The applicant requests a zone change from “SF-5” Single-family Residential to “GI” General Industrial on a 5.3-acre unplatted tract located 800 feet West of Broadway just south of I-235. The subject property is the west approximately 360 feet of a larger parcel zoned “GI” General Industrial with frontage on Broadway. The applicant proposes to develop the site with industrial uses.

The surrounding area is characterized by a mixture of commercial, industrial and residential development. The commercial/industrial development is located to the east and south and is zoned “LI” Limited Industrial and “GI” General Industrial. To the west of the subject property, single-family residences are scattered between undeveloped lots zoned “SF-5” Single-family Residential. Further south is the Chisholm Creek Diversion drainage right-of-way.

Being an extension of existing “GI” zoning, the applicant’s request seems reasonable at first glance. However, there are several issues to consider. First, the previous use was vehicle and equipment sales, outdoor and related services. This use could have been allowed by right in the “GC” General Commercial zoning district and did not require industrial zoning. Second, although the original industrial zoning request on the eastern portion of the applicant’s property was unable to be located, it occurred sometime prior to 1958. It is likely the subject property was left zoned “SF-5” Single-family Residential to serve as a buffer between industrial and existing residential zoning. Third, staff research was unable to identify any cases where “GI” General Industrial zoning was approved directly adjacent to existing single-family zoning. Finally, a 100-foot power line easement with a 138 kV transmission line bisects the subject property. This feature potentially makes site development difficult because of the typical restrictions on development within such easements and the need to provide an adequate buffer between the industrial and residential zoning districts, if the request is approved.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: NA	I-235 right-of-way
SOUTH: “LI”; “GI”	Industrial
EAST: “GI”	Broadway right-of-way; Industrial
WEST: “SF-5”	Single-family; vacant

**PUBLIC SERVICES:** The site has access to Broadway, a four-lane arterial street with traffic volumes of approximately 9,600 vehicles per day. The site also has access to a dedicated, unimproved portion of Kopplin Street along the west property line. If this request is approved, staff recommends a 30-foot half street dedication to complete right-of-way acquisition for Kopplin Street at platting. The site is currently served by Municipal water service via an eight-inch main in the Broadway right-of-way. Municipal sewer service is not available to the subject property. There are currently no sewer lines in the general vicinity and there are no plans for sewer expansion into the area in the foreseeable future.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Industrial Locational Guidelines indicate that industrial development should be located: (a) in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas; (b) away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The Industrial Locational Guidelines also indicate that traffic from this category should not feed directly onto local streets in residential areas. While the subject property has adequate access to an arterial roadway, it is located adjacent to a residential area, and there are insufficient utilities to support industrial development. Therefore, the request does not conform to the Industrial Locational Guidelines.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of commercial, industrial and residential development. The commercial/industrial development is located to the east and south and is zoned "LI" Limited Industrial and "GI" General Industrial. To the west of the subject property, single-family residences are scattered between undeveloped lots zoned "SF-5" Single-family Residential. Further south is the Chisholm Creek Diversion drainage right-of-way.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-family Residential, which accommodates moderate-density single-family residential development and complementary land uses. The site is not served by municipal sewer. Therefore, it is more suited to large lot residential development, a more restrictive zoning classification, rather than existing or more intense zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The uses allowed by right in the "GI" zoning district are typically not compatible with residential development because of noise, odor, traffic and other environmental concerns.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Regional Commercial" development. The Industrial Locational Guidelines indicate that industrial development should be located: (a) in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas; (b) away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. While the subject property has adequate access to an arterial roadway, it is located adjacent to a residential area, and there are insufficient utilities to support industrial development. Therefore, the request does not conform to the Industrial Locational Guidelines.
5. Impact of the proposed development on community facilities: Municipal sewer service is currently unavailable, so unless infrastructure is extended, any proposed development would need to use an approved septic system or lagoon. Additional industrial traffic would have a negative impact on nearby streets.

If, however, the Planning Commission believes this is an appropriate use, staff recommends approval be subject to platting within one year and the following Protective Overlay:

- A. The following uses shall not be permitted west of the power line easement: correctional facility; correctional placement residence, general; correctional placement residence, limited; recycling collection station, private; recycling collection station, public; recycling processing center; reverse vending machine; riding academy or stable; airport or airstrip; heliport; kennel, boarding/breeding/training; marine facility, recreational; recreation and entertainment, outdoor; secondhand store; asphalt or concrete plant, limited; asphalt or concrete plant, general; freight terminal; gas and fuel storage and sales; landfill; mining or quarrying; oil or gas drilling; research services; rock crushing; solid waste incinerator; storage, outdoor; transfer station; wrecking/salvage yard; grain storage; and adult entertainment.
- B. The development of this property shall only be permitted if municipal sewer services are provided.
- C. The applicant shall provide a site plan prior to platting, which must receive approval of the Planning Director and the Zoning Administrator prior to any development activities or issuance of building permits.
- D. All proposed lighting shall comply with Art. IV, Sec. IV-B.4 of the Unified Zoning Code. No pole lights shall be located west of the power line easement.
- E. There shall be no loudspeakers or sound amplification devices allowed outdoors.
- F. Landscaping shall be provided per the Landscape Ordinance, which shall be subject to the approval of the Planning Director.
- G. Compatibility Standards shall be provided per the Unified Zoning Code.
- H. The applicant shall dedicate, at platting, a 30-foot half street right-of-way along the west property line for the extension of Kopplin Street.

DUNAKY Presents the staff report.

MCKAY The residential property directly to the west, where is the closest house to this property?

DUNAKY (Points on map).

MARNELL All those vertical strip lines to the north of those residential lots, do you know what year those were platted in?

DUNAKY Yes, 1954.

MARNELL So they have been vacant since 1954?

DUNAKY Indeed they have.

ALDRICH In order to get that out of the floodplain area that would have to be built-up, correct?

DUNAKY I am not an engineer, but I assume that would be correct.

ALDRICH Since that is designated as a "ponding area" by the Corps of Engineers, if they say it can't be brought up so how do you do that?

DUNAKY Staff is recommending denial. We don't feel that is appropriate.

TIM AUSTIN, Poe & Associates In the slide show you can see that in this creek area, in this drainage area, which actually runs something like this, there are a significant amount of trees that act as a screening area. Also noted is that on a FEMA map it is in an A-O floodplain. I am not sure I would characterize it as a ponding area. It certainly is an area where when you look at the A-O designation floodwaters can get to a level of 1-foot or less. There has never been a flood in this area.

I would like to point out and take some issue with staff's report. This case is about the zoning of this property and not the uses, whether the uses were past uses as a commercial use as opposed to an industrial use. That is irrelevant. The fact is that it is zoned industrial or a good part of it is.

On page 3, under conformance to plans/policy, the Industrial Locational Guidelines indicate that industrial development should be located (a) in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, rail spurs, this property certainly is a component of property that is already zoned "GI" General Industrial and it does have access. So from that standpoint I disagree with staff that this does conform to guidelines for zoning property. It is expanding what is already there. It is zoned that way regardless of how it was used.

Secondly, (b) away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. Further to the west these lots here were platted in 1951, and the addition to south was platted in 1954 and there is a platted street right-of-way here, and 1/2 street right-of-way here. The fact is, as the site exists today, they could take access and put traffic through this residential area. There are no access controls along the west line and the only prohibition is the trees and the drainage. They would have to build that up but they could do that. If you adopted the proposed Protective Overlay we would be willing to put in a provision for a dedication of access control along the west property line and that resolves the issue of introducing industrial traffic into the residential street, which they could do today.

The question is whether "GI" General Industrial is compatible next door to residential? There are some instances around the city where "GI" General Industrial does abut residential properties. There are not very many but there are some. One I would point out is Willowbend, which is adjacent to "LI" Limited Industrial property. Many of these homes in this area have to pay flood insurance.

Also 360 feet was left out and was not zoned in the original zoning case, I don't think we can say one way or the other that it was left as a buffer, the fact is we don't know and we don't know if that buffer is there for any reason. We disagree with staff comments about infrastructure. We rezone property all the time without saying whether they have to provide sewer and water services. The fact is those are conditions that are addressed at platting to guarantee those services or alternatively if someone wanted to increase the use in the number of restroom facility here an on site system that is currently exist today if that is inadequate, they have to provide sewer extensions to the site.

We would like you to approve this request subject to the proposed Protective Overlay, with the exception of in Item (a) recreation and entertainment, outdoor, we would like to limit that to athletic fields only, Item (a) storage, outdoor, we would like that eliminated. Also, remove conditions (b), (c), (h). If there is a buffer, we would ask for 50 feet on the west property line to maintain the natural tree line that is already existing there.

MCKAY Tim do you know if they have a proposed use for this?

AUSTIN They do have a contract buyer on this piece of property.

MCKAY Including the subject property?

AUSTIN Yes.

GISICK The subject property is totally undeveloped?

AUSTIN That is correct.

BISHOP The property south of the subject area, how is that developed?

AUSTIN All that is zoned "GI" General Industrial and under separate ownership. There is some already zoned "LI" Limited Industrial and has very limited uses. Mr. Weems is the owner of all these lots, and on these lots he has a repair shop, and his son lives in the house, and there is an office for him also.

BISHOP Does the outdoor storage include large concrete barriers?

AUSTIN The storage that is there is truck trailers.

TED KNOPP, 310 W. Central, Suite 203, Wichita, KS 67202 I am an attorney for James Rowe who is the property owner of the Road House Club just south of the Chisholm Creek Drainage District. We have a number of people in the audience today that are concerned and in opposition to this application. Some will chose to speak and some will not.

This zone change is not an acceptable use of this property. The current zoning is "SF-5" Single-family Residential which does allow parking areas, and that is about the most intensive use that would be appropriate in this area. It is a use that recognizes the buffering need for that, and it recognizes the existence of power lines over the property, and recognizes the existence of floodplains.

The most extensive use that has been on this property before is "GC" General Commercial, which is in the memory of the people who are here today. The extension of that use, and not that zoning would be limited to "GC" General Commercial, not "LI" Limited Industrial and not "GI" General Industrial. This property is under contract to the same person that now occupies land to the south owned by the applicant in the next case. It is the same user and I don't know for sure if that he is going to own both pieces or lease one and own the other but the uses that have been identified with this property are wedding receptions, a north side cotillion, a bar,

soccer fields, and a outdoor rodeo arena. These proposed uses are what is requiring this requested zone change and the residents find these uses to be offensive and inconsistent with the transition between "SF-5" Single-family Residential and the existing uses on the property.

The owner of the properties of these lots here, she is present today and she will be able to speak to her intentions with respect to developing those lots, and what has kept them from being developed to date, and what her plans are once the sewer is extended, and what the impact of "GI" General Industrial zone change would have on her expectations with respect to the property. I have a slide show to share today.

ALDRICH Do you have any idea how long this has been used as a rodeo?

KNOPP Within the last six months, it is a recent usage.

DOWNING The pictures you showed us of the rodeo and the trailers and utilities, are they on the subject property as it exist today?

KNOPP No, in fact none of those buildings were there. The only part that I showed you that has relevance to the existing property is the area under the power line.

GARY MORRIS, Wichita Police Department, Beat 49, 3015 E. 21st Wichita, KS 67208 The reason I am speaking is for the land use that is potentially going to come out of this request. The person that runs the rodeo has a history up in the north part of Wichita. He owns about three or four clubs, and he has a history known for fights, underage drinking, and it was backed up to residential as well. Somebody suggested a cotillion ballroom that he wants to put in up there. The person that does put on the rodeo has applied for a dance hall and cabaret license already for the area. As of Tuesday night there were gunshots fired at the rodeo, and an officer went out to that disturbance. The neighborhood is upset, and I would like to see this request denied.

MCKAY Are you representing the Police Department or yourself?

MORRIS Both.

BRUCE SIMKINS, 501 W. 42nd Street North, Wichita, KS 67204 I am a retired resident. To give you some background from our point of view, we had no notice about the change or the consequences of a rodeo put in our neighborhood.

Some of our neighbors and I attended the DAB meeting, and we are very concerned about the neighborhood, and about the zone change. We are concerned about the noise pollution and other things that can happen. The DAB did not recommend the zone change. I have lived here for about 33 years, and you hear things very well out there the sound carries across the big ditch very well.

I spoke with Mr. Knopp, and I sent him some e-mails with some questions and one of the primary concerns about noise. He asked if I heard last weekend's ongoing noise and gunshots, on the last weekend they were testing loud speakers. The City Code has a noise section. I would like to know if anyone looked at that code which allows a waiver for Old Town. Has anyone looked at the possibility if that Code will be violated by the perspective activity on that site? There are federal regulations on noise pollution. Has anyone thought about the noise in a two-mile radius?

KAYLA BENSON, 3958 N. ARKANSAS, WICHITA KS 67204 The letter that was attached to this report, none of our neighbors know who submitted that letter. We are not prejudiced, I don't know of anyone in our neighborhood that has brought up the word "Mexican" once.

I think Mr. Austin is being deceiving about putting a soccer field out there, because all the neighbors know what is going out there, and not once did I hear him mention a rodeo. There are signs out there that say rodeo. I own some property back here, and we tried to build a house back there about 8-10 years ago, and we were told that there was a lot of red tape to go through and we decided it would be easier not to.

It is not like the neighborhood doesn't want something nice back there. We just don't want stuff like this going in there. If it is rezoned anything can go in there. The soccer fields will generate trash, and alcohol will be served. I understand the applicant put a sign up without a permit, and he had to take it down. He doesn't play by the rules. Mr. Weems says in his letter that we are prejudiced, and I want to state for the record we are not.

JANIS WATKINS, 601 W 39th STREET NORTH, WICHITA KS 67204 I own four lots back there that cannot be built on because of the floodplain. I have lived on this property since I was four years old and that was in the country. My parents lived in the house at the corner of 39th and Arkansas, and that has been home to me much longer than anyone else concerned.

I am very upset because someone said that the neighborhood doesn't need to know what kind of business is going in there. I am sorry we don't shut our eyes. We can walk the canal. We know what is going on there right now. Mr. Weems has been deceptive about this, he wrote a letter for a sewer for all of us to sign up and he didn't say why. He had these plans already in place. I am against the zone change. This would be a great disservice for the residential neighborhood. The area back there is a secluded area, and we have no comprehension what has been going on back there all these years. Mr. Weems has property in Colorado and his son lives on the property out here. I think all of General Industrial should be in heavy industrialized areas, and we are not even close to that. We believe our property values will go down. I have recently experienced first hand that there was a live band there, and we have heard the loud music. We also have the highway right next door to us.

AL HALL, 628 KOPPLIN, WICHITA KS 67204 My house is on the corner of Kopplin and Arkansas that is in that subdivision there. I would like to say first that Mr. Austin's presentations gives a whole new meaning to the word smoke screen, because that is all that it is. The noise that comes off those loud speakers actually rattles our windows, and that is not acceptable. We heard someone shooting a 45 automatic (we are pretty sure that was what it was) over there Tuesday night that scared my wife to death. We don't

live in a brick house. We live in a frame house with a big picture window in the front, and there is not much bullet protection there. We don't want to move. We want to live there for the rest of our lives.

This thing that they are doing in the back, they are talking about there might be a foot of water back there. This area right here (pointing to map) is the Chisholm Creek drainage. It drains into a trap door into the big ditch. At that point there it is about 30 feet deep, and up here it is more like 7-8 feet deep. This thing usually has 15-20 feet of water in it. This is the first time I have ever seen it dry because of the drought we have been having.

This proposed rezoning will ruin our neighborhood. I am opposed to the rezone. They have cleared trees there, and there is a waterway there and all those logs are still there. All we need is some flooding type weather and they will all be stuck in that trap door going down to the big ditch. They will let that water back into our neighborhood then. They have a rodeo there right now. We have heard about the wedding chapel, the soccer grounds, and everything else but we are opposed to the rezoning of this property.

SUE CRUSE, 605 W. 38<sup>th</sup> Street North, WICHITA KS 67204 I live the closest of the people that have talked so far. I am the second house, and I have lived on that property six years. In six years we have never had a police officer out there. Now we have music, and gunshots. It is a dirt road and in this past month we have had the police officers out there three times. There are horses and trailers going through my lot to get to his lot. With my doors and windows closed Saturday, I heard the vibrations, and the music. We had to leave my house until they were done.

JAMES ROWE, 3813 N. BROADWAY, WICHITA KS 67219 I own the property at 37th and Broadway. About two months ago, what happened was Ryan Weems came into my club and started talking about some gentleman buying all the property up north here, and that Mr. Delgado has the money and he will throw money down. We seen a sign about a Plaza Garibaldi and in Mexico "Garibaldi" is nothing but a party, nightclubs, and horses. That is what "Garibaldi" means.

My opinion of the whole scenario of both these rezoning both properties are needing to be "GI" General Industrial, so the person under contract on the Eck property is this person Mr. Delgado, that we are talking about. What I seen happening, if this is zoned "GI" or even "GC" General Commercial this guy will have what he wants. He will have a playground in the north end of town. There was a mention of a sewer. Ron Weems has setup petitions for sewer so he can have sewer, and then he will have water to the property, and he can have that nightclub.

WYNONNA PRUITT I live on 43rd Street North. In addition to what others have said, I was walking for water petitions in the area before Ron Weems did, and he would not respond to me, and he would not sign anything or help to improve our residential area. Now he wants the sewer petitions signed. He has had a sign up there that said Do Not Enter, and I have talked to people that say he will shoot if you get near the property. I called and called, and he has not tried to improve this area.

TIM AUSTIN I want to make this real clear that I am representing the Eck family, contrary to what some of the neighbors have heard; the tree clearing is being done by the utility company. I am sure there is some traffic, and I was back there a couple of weeks ago. The rodeo is not on the Eck property, it is on Mr. Weems' property, and really all that discussion is not about this case. These are separate cases. The thing about the soccer fields, I believe that would be a good use, and there are several that are built by residential neighborhoods already in Wichita. The drainage that comes through the back property does not go back into the ditch in that location it goes underneath the ditch and goes down further south and all the way down to 21st and Broadway.

**MOTION:** Based on staff recommendation and the DAB recommendation I move to deny the application.

**ALDRICH** moved, **BISHOP** seconded the motion, and it carried (10-0).

5. **Case No.: ZON2006-06** – Ron Weems (Owner/Applicant); Poe & Associates, c/o Tim Austin (Agent) Request Zone change from "SF-5" Single-family Residential to "GI" General Industrial on property described as;

Beginning 128.1 feet South of the Northeast Corner of the South 30 acres of the Southwest Quarter of the Southeast Quarter of Section 29, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; Thence West and South 233.7 feet to the East line of Kopplin Addition, Sedgwick County, Kansas; Thence South along the East line of said Addition to the North line of the flood way; Thence North and East to the East line of the Southwest Quarter of the Southeast Quarter; Thence North to beginning. Generally located West of Broadway and south of I-235 (3939 N. Fairview).

**BACKGROUND:** The applicant requests a zone change from "SF-5" Single-family Residential to "GI" General Industrial on a 2.64-acre unplatted tract located 460 feet south of I-235 and 1,200 feet West of Broadway. The subject property has dedicated, unimproved right-of-way on the north. However, access is from an unpaved private drive through the applicant's adjacent properties. The applicant proposes to develop the site with industrial uses.

The surrounding area is characterized by a mixture of commercial, industrial and residential development. The commercial and industrial development is located to the east with access to Broadway and is zoned "LI" Limited Industrial and "GI" General Industrial. To the west and north of the subject property, single-family residences are scattered between undeveloped lots zoned "SF-5" Single-family Residential. The property to the south is the Chisholm Creek Diversion drainage right-of-way. The applicant owns the properties east and west of the site.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5" Vacant; Unimproved right-of-way  
SOUTH: "SF-5" Undeveloped; Drainage ditch

EAST: "LI"; "SF-5" Industrial; Vacant  
WEST: "SF-5" Single-family; Vacant

**PUBLIC SERVICES:** The site has platted access to West Kopplin Street, however the right-of-way is unimproved. The site also accesses Broadway and West 38<sup>th</sup> Street via a private drive that runs through the applicant's adjacent properties. The nearest paved street is Arkansas Avenue, a two-lane arterial street with traffic volumes of approximately 3,800 vehicles per day. Access to Arkansas Avenue is only available through a residential neighborhood with unpaved streets. The "GI" Limited Industrial zoning requested is the least restrictive zoning district in the Unified Zoning Code and allows a broad array of commercial and industrial uses by right. Therefore, approval of this request could mean a drastic increase in traffic volume on nearby streets.

The site is currently not served by Municipal water service. Nearby properties are served by eight-inch water mains in the both the West 38<sup>th</sup> Street and Broadway rights-of-way. Municipal sewer service is not available to the subject property. There are currently no sewer lines in the general vicinity and there are no plans for sewer expansion into the area in the foreseeable future.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Urban Residential" development. The Industrial Locational Guidelines indicate that industrial development should be located: (a) in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas; (b) away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The Industrial Locational Guidelines also indicate that traffic from this category should not feed directly onto local streets in residential areas. While the subject property is located near I-235 and Broadway, there is insufficient access to those roadways because the only platted street access is to an unimproved local residential street. Furthermore, it is located adjacent to a residential area, and there are insufficient utilities to support industrial development. Therefore, the request does not conform to the Industrial Locational Guidelines.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of commercial/industrial and residential development. The commercial/industrial development is located mainly along Broadway, or at least with access to Broadway, and is zoned "LI" Limited Industrial and "GI" General Industrial. To the west and north of the subject property, single-family residences are scattered between undeveloped lots zoned "SF-5" Single-family Residential. The property to the south is the Chisholm Creek Diversion drainage right-of-way.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-family Residential, which accommodates moderate-density single-family residential development and complementary land uses. The site is not served by municipal sewer services. Therefore, it is more suited to large lot residential development, a more restrictive zoning classification, rather than existing or more intense zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: If the request is approved, the main access will be through a residential area with unpaved local streets. The uses allowed by right in the "GI" zoning district are typically not compatible with residential development because of noise, odor, traffic and other environmental concerns.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Urban Residential" development. The Industrial Locational Guidelines indicate that industrial development should be located: (a) in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas; (b) away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The Industrial Locational Guidelines also indicate that traffic from this category should not feed directly onto local streets in residential areas. The request does not conform to these locational guidelines. Furthermore, staff could identify no other examples of "GI" rezoning approval directly adjacent to existing single-family zoning within Wichita city limits.
5. Impact of the proposed development on community facilities: There is no access to improved streets. Access could only be accomplished through a residential area or by way of an unpaved private drive. Either one is insufficient for industrial traffic. The subject property is currently not served by municipal utilities.

DUNAKY There are some differences between this application and the other one. This is not an extension of existing "GI" General Industrial zoning. If this is approved this will constitute a step-up in zoning between "LI" Limited Industrial and residential zoning. That is one reason why staff feels this is not an acceptable request. All of this is unpaved and unimproved. That road cannot withstand industrial traffic. There is no municipal water or municipal sewer, and there are not paved streets that go back there.

ALDRICH Is that ponding area #9 of the Corps of Engineers?

DUNAKY Correct.

TIM AUSTIN We disagree with staff's representation in their staff report. It is extension of Industrial property. Mr. Weems owns all these parcels, and they are unplatted. It is not appropriate as residential property because the drainage does come like this on the west side of the property. It is not a ponding area. It can be filled. This property is not zoned "SF-5" Single-family Residential. "GI" General Industrial may be an overall heavy use, maybe "LI" Limited Industrial would have been a better request, although there really isn't that much difference. Since Mr. Weems owns this, we will offer the same conditions of the Protective Overlay that we recommended in the last zoning case, access control dedication and add a condition to dedicate access run across the property.



That way there is always access to the public right-of-way. If you want a buffer and assume this is going to be developed with homes, it is not going to happen until the drainage issues are resolved. It can't be developed.

BISHOP Could you give me some information on the Code Enforcement history?

AUSTIN Officer Morris and I played phone tag and e-mail tag. The rodeo that everyone refers to is on Mr. Weems' property; it is in the industrial zoned area. Mr. Delgado has that leased from Mr. Weems. I understand from city staff that Mr. Delgado had applied for a permit for the rodeo, and I do not know if he has one.

WARNER We have heard about noise, and we have heard a lot of things. We will hear you but please do not duplicate what testimony we have already heard.

TED KNOPP, Attorney representing James Rowe This property shares all the same consideration as the ZON2006-05 case. This property we do have people living in close proximity. This property is no more industrial than the property to the north of us. This is the one that is going to be an island of general industrial use right next to a single-family zoning classification separated from any general industrial use. It makes no planning sense. The usage that is going on there is inconsistent with the single-family residences to the west and any commercial uses such as parking and the like are permitted as a conditional use in the single "SF-5" classification. Again, I will ask the people here today to raise their hands as to who is opposed, and whether they get to speak or not you can see the sentiment of the audience. The pictures that I have presented in connection with the ZON2006-05 have relevance to this case as well.

AL HALL 628 KOPPLIN, WICHITA KS 67204 This property right here is what we are talking about now. This whole neighborhood, Mr. Weems is going to try and get the sewer petitions in there for this over here, and get us to pay for it. That is why he is wanting us to have sewer, and none of us want that sewer. We don't want to pay \$10,000 for each lot to have sewer.

**MOTION:** Based on staff recommendation and the DAB recommendation I move to deny the application.

**ALDRICH** moved, **BISHOP** seconded the motion, and it carried (9-0).

MARNELL We have discussed this once before. We are not going to have anonymous pieces of paper attached to the staff report. I think anything that comes to this Commission that is not identified by a person who is submitting the information is not to come before the Commission.

MILLER The envelope has a return name and address, we did not include that but we do know whom it came from. I agree with you.

MARNELL I suggest you put it on here or don't put it in the packet.

6. **Case No.: CUP2006-07 DP296 Associated with (ZON2006-08)** – Geraldine Faber Revocable Trust, Geraldine Faber, Trustee (Owner); Baughman Company, PA, c/o Terry Smythe (Agent) Request The creation of Faber Community Unit Plan; and zone change from "SF-5" Single-family Residential to "LC" Limited Commercial and "GO" General Office on property described as;

CUP2006-07: The South 634.74 feet of the West 790.10 feet of the Southwest Quarter of Section 31, Township 26 South, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas TOGETHER with the East 520 feet of the West 1310.10 feet of the South 449.04 feet of said Southwest Quarter, subject to road rights-of-way of record.

ZON2006-08 LC Limited Commercial Tract: The south 634.74 feet of the west 790.10 feet of the Southwest Quarter of Section 31, Township 26 South, Range 1 West of the 6<sup>th</sup> P.M. Sedgwick County, Kansas subject to road rights-of-way of record.

ZON2006-08 GO General Office Tract: The east 520.00 feet of the west 1310.10 feet of the south 449.04 feet of said Southwest Quarter, subject to the road rights-of-way of record.

Generally located on the northeast corner of 29<sup>th</sup> Street North & 119<sup>th</sup> Street West

**BACKGROUND:** The applicant proposes to create a commercial Community Unit Plan containing approximately 16.87± gross acres and 13.9± net acres with seven parcels located on the northeast corner of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West.

Parcels 1-5 would be zoned "LC" Limited Commercial. Parcel 1, the largest parcel with 3.87 acres, would have access drives to 29<sup>th</sup> Street North and 119<sup>th</sup> Street West. Parcels 2, 3, 4 and 5 range in size from 1.14 acres to 1.58 acres and would front onto the arterial streets. Prohibited uses for Parcels 1-5 would be: adult entertainment establishment, group residential, correctional placement residence, multi-family residential uses, hotels and motels, wireless communication facilities, recycling stations, animal care facilities, private clubs, taverns and drinking establishments, nightclubs, or sexually oriented businesses. In addition, no overhead doors or truck docks would be allowed within 200 feet of residential zoning or facing residential zoning. Parcels 1 and 2, the parcels that are closest to the residential uses to the north and east, also would prohibit convenience stores, service stations, car washes, or drive-in or drive-through restaurants.

Parcels 6 and 7 are 2.32 acres in size each and would be zoned GO General Office. The parcels are located along 29<sup>th</sup> Street North and allow those uses permitted in the GO district.

Setbacks are shown as 35 feet along the arterial streets and exterior property boundaries. Internal building setbacks are 15 feet but would not be required if parcels are developed under the same ownership. An eight-foot masonry wall is shown along the north and east property lines within a five-foot wall easement. Maximum building height is 35 feet. Maximum building coverage and maximum gross floor area is requested at 30 percent. A maximum of three buildings are requested for Parcels 1, 6 and 7, and one building for Parcels 2-5.

Each parcel would be allowed monument-type signs with a maximum height of 20 feet for Parcels 1-5, reduced to 12 feet for the northern 50' of Parcel 2 and all of Parcels 6 and 7. Maximum sign area for Parcel 1 would be 200 square feet for each street frontage, and 0.8 times linear arterial street frontage for Parcels 2-5 (200 square feet maximum). Parcel 6-7 would be 0.5 times linear street frontage (75 square feet maximum), with all ground signs spaced 150 feet apart. The proposed signage would exceed the amounts allowable under the City of Wichita Sign Code. Portable and off-site signs and signs with flashing or moving lights are prohibited. Window displays would be limited to 25% of window area on Parcels 1-5 and prohibited on Parcel 6-7; signs on the rear of buildings would be prohibited.

Buildings would have uniform architectural compatibility of character, color, texture and materials, and would use earth-tone colors predominately; exterior walls facing residential would not be metal siding. Parking lots would have similar or consistent lighting elements, limited to 24 feet in height except that within 50 feet of residential zoning, lighting would be reduced to 14 feet. The parcels would share a similar landscape palette. A site plan would be required to assure internal cross lot circulation, joint access and smooth traffic flow. A Pedestrian connectivity would be provided with arterial sidewalks and between buildings onsite.

The property to the north and east is being developed as a single-family subdivision, The Fontana Addition. The property to the south is approved for a 12-acre community unit plan, DP-235, Westridge CUP zoned LC and NR Neighborhood Retail, and is undeveloped. The property to the east of the CUP is zoned SF-5 Single-family Residential and owned by the Catholic Diocese; it could be developed with institutional uses. The property to the northwest is owned by the City of Maize for park and utility uses. The property to the southwest is zoned SF-20 Single-family Residential and is in agricultural use.

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Vacant
SOUTH:	LC, NR, SF-5	Vacant
EAST:	SF-5	Vacant
WEST:	City of Maize	Park and utility use

**PUBLIC SERVICES:** Four access points (one restricted to right-in/right-out only) are requested on 29th Street North and two on 119<sup>th</sup> Street West (one restricted to right-in/right-out only). The opening onto 119<sup>th</sup> Street West is nearer than typical for the first full movement opening, but no right-in/right-out is requested between this opening and the intersection and only one other opening along the northern boundary of the CUP as a right-in/right-out opening is requested.

29<sup>th</sup> Street North and 119<sup>th</sup> Street West are minor arterials. A project by the City of Wichita to improve 29<sup>th</sup> Street North from Maize Road to 119<sup>th</sup> Street West as a four/five lane roadway and intersection improvements on 119th is underway. Traffic counts for 119<sup>th</sup> Street West were approximately 3,000 vehicles per day in 2004. The County has a project to improve 119th Street North to two lane standards in 2009. The County right-of-way was annexed by the City of Maize.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide", 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". The proposed CUP is in conformance with this designation.

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP would follow these guidelines.

**RECOMMENDATION:** Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2006-08) to LC Limited Commercial and GO General Office subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-296), subject to the following conditions:
  1. The applicant shall guarantee an eastbound left turn center lane and a westbound right-turn decel lane to the full movement opening on 29th Street North at time of platting.
  2. Change General Provision 6A: Parcel 1 and Parcels 2-5 maximum size of 150 square feet. Parcel 6-7 (Maximum size as permitted in GO district by City of Wichita Sign Code).
  3. Change General Provision 17 as follows: (1) edit Section III-D.6.0 to read Section III-D.6, (2) remove the restriction on group homes, and (3) add a restriction to prohibit safety service, pawn shops and storage, outdoor.
  4. Increase the building setback on the northern boundary of Parcel 6 and Parcel 7 and eastern boundary of Parcel 1 to 50 feet.
  5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.

6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. All property included within this CUP and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
8. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-296) includes special conditions for development on this property.
9. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north and east is being developed as a single-family subdivision, The Fontana Addition. The property to the south is approved for a 12-acre community unit plan, DP-235, Westridge CUP zoned LC and NR Neighborhood Retail, and is undeveloped. The property to the east of the CUP is zoned SF-5 Single-family Residential and owned by the Catholic Diocese; it could be developed with institutional uses. The property to the northwest is owned by the City of Maize for park and utility uses. The property to the southwest is zoned SF-20 Single-family Residential and is in agricultural use.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed as zoned, but the commercial use to the south could negatively impact residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The CUP uses restrictions on Parcels 1-5 and zoning on Parcels 6-7, and the eight-foot solid screening wall would mitigate some of the impacts. The northern boundary of Parcels 1 and 2 are buffered by a drainage reserve and an increased setback on Parcels 6 and 7 could provide additional separation for the office tracts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide", 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". The proposed CUP is in conformance with this designation. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP would follow these guidelines.
5. Impact of the proposed development on community facilities: The impact on traffic is less for local commercial than for a full-scale regional commercial facility.

DONNA GOLTRY My understanding is that the agent is in conformance with all the requested conditions except for a request that the 50-foot setback in Condition #4 be changed to 35 feet. The other thing is that, at the time of platting, there will be a need to define more precisely the access points along here (pointing to the right-of-way along Parcels 6 and 7). There are two access points, one on each lot. This will work but it probably needs to be a joint access at this location (pointing to the boundary line between Parcel 6 and Parcel 7) that is full movement. Otherwise, the other opening would be right-in/right-out in order to conform to Access Management Policy.

SMYTHE The only comment that I wanted to clear up is about the building setback line. They would like to have a 50-foot setback. When we put together this CUP, we worked very closely with the developer to the north that owns the residential lots and that bought that property from this current owner. The developer of that property has come up with the 35-foot setback along that north property line.

HILLMAN What is the planned use of the property?

SMYTHE On the two parcels to the east there will be a medical complex. For the time being, the existing house that is out there is going to be kept in place for a number of years. And, the rest of it is going to go to small pads, restaurant pad sites and a small strip mall behind it.

MITCHELL Donna you said the DAB agreed to the 35 feet setback?

GOLTRY Yes.

**MOTION:** Approve subject to staff comments with the change from 50 feet to 35 feet setback in Condition #4.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried (10-0).

- 
7. **Case No.: ZON2006-10** – Gary & Lorena Tomey (Owner); Jeff Niedens (Agent/Contract Purchaser) Request Zone change from "SF-5" Single-family Residential to "TF-3" Two-family Residential on property described as;

The South 198 feet of the East 257.7 feet of the North Half of the Northeast Quarter of the Southeast Quarter of Section 15, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located on the northwest corner of Hoover Road and 8th Street North.

**BACKGROUND:** The application area is a vacant unplatted lot, located west of Hoover and north of 8<sup>th</sup> Street North, along the east side of I-235. The 1.13-acre site is zoned "SF-5" Single-family Residential, the applicant requests "TF-3" zoning to allow for duplex development.

Property north, south, and east of the site is zoned "SF-5" Single-family Residential and developed with single-family residences or vacant. West of the site is I-235, with multi-family zoning and uses west of the freeway. Several "TF-3" Two-family residential properties are in the general neighborhood, including five duplexes approximately 800 feet south of the application area on Hoover. An "LI" Limited Industrial zoned manufacturing facility exists approximately 500 feet north of the site on Hoover. The site has easy access to both Central and I-235.

**CASE HISTORY:** The site is undeveloped and unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, LI	Single-family residential, vacant, manufacturing
SOUTH: SF-5, TF-3	Single-family residential, duplexes
EAST: SF-5	Single-family residential
WEST: B, MF-18	Freeway, nursing home, multi-family residential

**PUBLIC SERVICES:** Hoover is a paved local road with a 70-foot right-of-way at the site. The site has easy access to Central, an arterial street, and I-235. All municipal services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Urban Residential". The Urban Residential category includes all densities of residential development found within the urban municipality. The Unified Zoning Code (UZC) requires a minimum lot area of 3000 square feet per residential unit in TF-3 zoning, and a minimum lot width of 35 feet. Under TF-3 zoning, the site could be developed with up to six lots, depending on how the developer chooses to plat.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The immediate surrounding properties are zoned "SF-5" Single-family Residential, and developed primarily with single-family homes. Several "TF-3" Two-family Residential zoned duplexes are in the surrounding neighborhood, including five duplexes 800 feet south of the site on Hoover. An "LI" Limited Industrial zoned manufacturing use exists 500 feet north of the site on Hoover. The proposed rezoning could serve as a buffer between existing single-family zoning and I-235.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as currently zoned with single-family residential uses. Because the site abuts an expressway, it may not be desirable for single-family development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double the density at which the site could be developed. However, single-family residences generate more traffic per unit than two-family residences. The minimum standards of the Unified Zoning Code should mitigate any other potential negative affects on the surrounding residential neighbors.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Urban Residential". The Urban Residential category includes all densities of residential development found within the urban municipality; the zone change request is consistent with the Land Use Guide.
5. Impact of the proposed development on community facilities: Traffic on the existing residential street will increase as a result of the proposed development. This site has access to an arterial street and to an interstate highway.

MCNEELY staff report.

ALDRICH You made a statement that Hoover is paved. You need to clarify that because it is only paved to 9th Street. Literally north of 9th to 13th it is not paved, and it is dusty and everything else. That is one of my concerns, that since it is not paved up there you will obviously bring additional traffic going in there, and that will create a dust problem then we have now. There were some duplexes put in here the last couple of years just to the south of that, and it does not seem like they finished the job, like the yard work.

JEFF NIEDENS, 5211 W. 81st ST NORTH, VALLEY CENTER, KS 67147 I am the contract purchaser. This duplex we have just finished. Construction on the duplexes to the south, that is probably why they look like they are not finished. There are potentially three (3) parking spaces off street per unit. I drove by the property Tuesday morning and the neighbors to the north and the south were concerned about parking the cars off street and parking on the yards, and there are more cars parked in single-family around my units than are off my units.

ALDRICH You finished the other duplexes over a year ago, correct?

NIEDENS I am a small business owner, and I have built them myself so that was actually 1 1/2 years for me to build all those.

ALDRICH So, they have been completed for how long now?

NEIDENS I finished the grading on the last one two weeks ago.

ALDRICH I remember last year you had people living there.

NEIDENS There are six units total, we couldn't afford to build them all at once, and we don't have the manpower so we had to stagger them and build them one at a time.

ALDRICH I live in that neighborhood, and we have been trying to get this neighborhood up, and on a personal note, if this is approved, I hope you do a lot better job than you did on the south end.

NEIDENS I can understand your concerns and I will be more than happy to meet with you, and get anything taken care of that you don't like. I know that we need to match our driveways. Other than that I don't understand your concerns.

ALDRICH I will get with you later.

**MOTION:** To approve subject to staff recommendation.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (10-0).

8. **Case No.: ZON2006-13 and CON2006-07** – Living Waters House of Prayer, Inc., (Nick Harris), co-applicant, Jim Volk, (Contract Purchaser), co-applicant; Don Folger, Jr. (Agent) Request Amendment to Protective Overlay #136 to remove "car wash" from list of prohibited uses and a Conditional Use to permit a car wash

The North 220 feet of the East 135 feet of Lot 1, Block A EXCEPT that part platted as Ellson Court Addition, Sedgwick County, Kansas. Generally located at the southwest corner of Central and Ellson

**BACKGROUND:** On December 14, 2004, the Wichita City Council approved ZON2003-66, which granted "LC" Limited Commercial zoning subject to Protective Overlay #136 on 4.74 acres located at the southwest corner of east Central Avenue and Ellson. The 4.74 acres was platted in 1990 as the New Life Christian Church Addition, followed by a lot split filed in 2003, to create a 1.19-acre "Tract B" on the eastern 135 feet of the 4.74 acres (see site plan attached). It is the northern 220 feet of Tract B, which is .68 acre in size that is the subject of this application. The southern approximately 150 feet of "Tract B" is not part of the application, and is platted a floodway reserve.

PO #136 included a list of prohibited uses that included a "car wash." The applicant is seeking to amend PO #136 to delete "car wash" as a prohibited use, and to obtain approval of a Conditional Use to permit a "car wash" in the "LC" zoned application area. The proposed car wash is to set on the northern 220 feet of the application area. The site plan submitted by the applicant indicates the eight-bay car wash would be located north to south, with access off of Central Avenue and Ellson Street. Two of the bays would contain automatic washers with dryers. Queuing is to be east to west. The vacuum islands are to be located along Ellson Street with 12 parking stalls. None of the wash bays are proposed to be located within the platted 30-foot setback. However, the 12 drying stalls and the vacuum islands located along Ellson are located within a platted setback. (It is Planning staff's understanding that drying stalls are considered by the Office of Central Inspection to be structures and cannot be located within a platted building setback. To develop the site as shown the platted setback would need to be vacated.) A five-foot landscape strip is to be located along Ellson, along Central Avenue and along the west property line.

Property to the west is developed as a church, and zoned "LC" Limited Commercial; to the north is a mix of "LC" and "SF-5" Single-family Residential zoning that is developing retail and residential reserve areas; to the east is "SF-5" zoning developed as residences and to the south is "LC" and "TF-3" Two-family Residential zoning, that is developed with residences.

**CASE HISTORY:** ZON2003-66 granted "LC" Limited Commercial zoning to the application area subject to Protective Overlay (PO) #136. The application area is Tract B of Lot 1, Block A, New Life Christian Church Addition. The plat was recorded in 1990; a lot split to create Tract B (L/S 2003-140) was completed in 2005.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5" Single-family Residential, "LC" Limited Commercial; Developing retail, Residential  
SOUTH: "LC" Limited Commercial, "TF-3" Two-family Residential; Floodway, Residences  
EAST: "SF-5" Single-family Residential; Residences  
WEST: "LC" Limited Commercial; Church

**PUBLIC SERVICES:** Central Avenue has 50 feet of dedicated half-street right-of-way, with a 10-foot contingent sidewalk and utility easement. Central is a paved 4-lane arterial carrying an average daily traffic volume of 10,207. Ellson has 30 feet of half street right-of-way, and is a paved two-lane residential street.

**CONFORMANCE TO PLANS/POLICIES:** The "Unified Zoning Code" Supplementary Use Regulations contain the following standards for "car wash" uses: All buildings are to be setback at least 35 feet from arterials, expressways or freeways or 20 feet or the platted setback from other streets; all car wash structures are to be located at least 60 feet from a residentially zoned lot; a fence with a minimum height of six feet shall be provided along the interior or rear property line when adjacent to a dwelling; the site is to be paved; lighting and noise created by the site is to comply with adopted standards; signage is limited to that permitted by the

underlying zoning; the traffic engineer is to review the circulation plan; parking guards are to be installed to prevent vehicles from encroaching the street right-of-way; no access is allowed to residential streets have 60 feet of right-of-way or less, unless there are two free-moving lanes at all times and a drainage plan shall be implemented to the satisfaction of the appropriate Public Works department.

The Comprehensive Plan map depicts this site as appropriate for local serving commercial uses. Commercial and Office land use strategies state that highway-oriented uses, outdoor sales and non-retail commercial uses should be confined to highway corridors, and established urban areas containing similar concentrations of uses.

The access to Central Avenue depicted on the site plan is not consistent with adopted access management policies. The traffic engineer has requested that, if the request is approved, the applicant shall delete that access in favor of the existing drive on the church's property to the west, and obtain a cross lot access agreement or close the church's eastern drive and relocate it to straddle the lot line between Tracts A and B to provide joint access to both uses. This arrangement would be more consistent with the access management policy and should not pose a problem since the church owns both lots.

**RECOMMENDATION:** This request is a difficult one in that many car washes in this community have been located along arterials, some of them abutting single-family residential zoning and uses. The residential zoning located immediately north of Central is the entrance to the Preston Trails neighborhood that is bordered by two reserves. The land to the northeast is a large-lot single-family residence, as is the land east of Ellson. The land to the west is owned by one of the co-applicants, and is developed with a church. There is a platted 135-foot wide floodway reserve that buffers the residential uses located to the south. However, this site has benefit of relatively recent past MAPC action (2003) to specifically exclude "car wash" as a permitted use on this site. Based upon information available prior to the public hearings, planning staff recommends that the request be Denied.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land to the south and west is zoned "LC" Limited Commercial, but with restricted uses including car wash. Land to the north is zoned both "SF-5" Single-family Residential and "LC." Land to the east and further south is "SF-5" and "TF-3" Two-family Residential. At this point, Ellson is the dividing line between residential zoning and non-residential uses on the south side of Central Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The site's zoning permits a wide variety of uses permitted by the "LC" Limited Commercial zoning district, providing the site with economically viable uses as zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval would permit a use that operates on a 24-hour a day, seven days a week basis capable of generating noise not usually present in the overnight hours. Such uses, if not properly operated, can create detrimental effects for surrounding properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If denied, the applicant could presumably find an alternate location for this use. Approval would provide additional car washing services in this general area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan map depicts this site as appropriate for local serving commercial uses. Commercial and Office land use strategies state that highway-oriented uses, outdoor sales and non-retail commercial uses should be confined to highway corridors, and established urban areas containing similar concentrations of uses.
6. Impact of the proposed development on community facilities:

If in the opinion of the MAPC this is an appropriate use at this location, approval of this request is subject to the following conditions:

1. The site shall be developed in conformance with an approved site plan. The site plan shall be modified to eliminate the direct drive access from Central to the car wash in favor of either a joint access shared by the church and the car wash or use the church's easternmost existing drive with cross lot circulation agreement. Relocate the vacuum islands out of the platted setback or obtain a vacation. A landscape plan consistent with the Landscape Ordinance shall be submitted and approved prior to commencement of business.
2. The site shall be operated in compliance with all applicable regulations, including Unified Zoning Code Supplementary Use Regulation f.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition of enforcing any other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

MCKAY I need to declare a conflict of interest. The agent, Don Folger, Jr., is my nephew.

MILLER I have had two phone calls, one representing the neighborhood association and, I believe, there is a letter in the packet from her, and a gentlemen that called. DAB II recommended denial of this application.

ALDRICH Dale, do you have an idea of the amount of traffic flow on Ellson Street?

GOLTRY They don't have traffic counts on local streets.

MITCHELL The paving of Ellson, wasn't it required that a petition be provided by this property that went clear to the south line of the drainage easement?

MILLER It was my understanding that there was a requirement. Today Ellson is asphalt with no curb and gutter.

MITCHELL This site plan is showing the traffic going out on Ellson.

MILLER Explains by pointing to site plan.

BISHOP This is an amendment to the Protective Overlay. Is that advertised in the usual way and signs are posted in the area?

MILLER Yes.

WARNER Were these duplexes there when the overlay was made in 2004? Were the residential houses there at that time?

MILLER Yes, all these homes were there back then.

WARNER So the Planning Commission had the position at that time that a car wash was not a use to be at that location?

MILLER Correct.

MARNELL Do you know how much zoning has changed along this area? It looks like a lot of property must have changed zoning for this to open up.

MILLER I remember the Saturn application here on the northeast corner, and the Q-Trip there. I don't remember that there has been too much.

MARNELL Those two lots to the north, one is developed and the other is under development right now. But turning to the east?

MILLER You have to go clear over to K-96 before you hit any non-single family zoning further to the east.

MARNELL There must be speculation because there are quite a few signs.

MILLER There was some "GO" General Office done for a real estate office and there is a hotel or motel.

MARNELL I was referring to the street along there.

MILLER As I indicated at the DAB meeting, if this request was over here instead of there, then we probably would not be taking issue with the application.

DON FOLGER, Jr., 234 S. Topeka, Wichita, KS 67202 In regards to the use of this site for a car wash, in the protective overlay the car wash was put in there, and car washes have to have a Conditional Use in "LC" Limited Commercial so it was lumped in there, and from what I can tell there was not a real reason for it, and it was put in there with a lot of other things that typically happen when you are trying to protect an "LC" Limited Commercial in a Protective Overlay.

What we would like to do is look at this specific car wash, and see if it is useful for a Conditional Use for this site. Having to do with the traffic and that was a concern at the DAB meeting, and I spoke with the contract buyer, and we thought the best circulation was to bring the traffic to exit off of Ellson. The contract buyer has done a lot of studies on how much traffic a car wash generates, and it is very minimal. But if that is an issue to keep this from happening, and the concerns of the neighbors, we would work with Traffic Engineering to make one opening onto Central to come in and go back out.

The second reason that we thought this was a good site is because on a car wash you want to be close to residential, but you don't want to be right against it because nobody wants a car wash right in their backyard. We have a letter from the neighbor to the east that says that he is in favor of the application. Also, the drying stalls are considered by OCI to be structures and cannot be located within a platted building setback. We would reshuffle the vacuums, and move those to either the south end or the north end to take care of what they want.

JIM VOLK, 606 Stone Creek, Newton, KS 67144 I have a car wash at Maple and Maize, and I would like to build this one on the eastside. The big challenge that I have is overcoming a perception that car washes are not good. I am on the site on a daily basis. I spent months looking for the right location because I knew I was going to have to be here in front of this Board and the neighborhood.

I think this neighborhood is good because (a) I think I can pay the loan, and (b) also the fact that everybody all the way from Andover is hopefully going to see my business driving down Central, or 13th or 21st Street. I saw the development and the "LC" Limited Commercial being developed in the area. I also thought Ellson would be a perfect street to exit onto because there will not be that much demand based upon my business. With one curb cut to get into my business, and the church and I will share that curb cut the traffic, they can go to the church or the traffic can come to me. I am going to screen the church so they have screening. I put the vacuums on Ellson primarily because people like to vacuum their vehicles on their way out. If they do it prior to washing it causes a backlog. All my stalls are heated, so there is not a slipping problem. The Q-Trip is all the way to the west, and they weren't willing to sell me their property.

MITCHELL Ellson is not paved. There will be at some point a need to put curb and gutter and paving in there, that would shut off your south drive for a considerable period of time.

VOLK I am of the opinion that I will fight that battle when we get there. I think the Traffic Engineers are very good, and I think they could maybe take me down to a smaller exit, and possibly do the curb and gutter on the one and do the other at the same time. If they are going to shut me down they are going shut a lot of residential in the area down too, so I am not that concerned about that.

MITCHELL Also, in conformance and plans policy statement in the report, the statement towards the bottom says, "no access is allowed to residential streets have 60 feet of right-of-way or less, unless there are two free-moving lanes at all times and a drainage plan shall be implemented to the satisfaction of the appropriate Public Works Department." You won't have two moving lanes on Ellson until it is paved.

VOLK Ellson is paved, but it does not have curb and gutter.

MITCHELL It is temporary pavement with a narrow width, and it does not permit two lanes each way.

VOLK I am not in the construction business, I would make an educated guess that when they do put in curb and gutter they do pave that.

MITCHELL If the planning recommendation in that section did not permit you access to Ellson Street, could you go ahead and develop this site?

VOLK I believe that we could. We put an exit on Ellson because we thought that would be best for the neighborhood, and best for Central. We can redo the plan, and we don't have to exit on Ellson.

HILLMAN How close to the corner on Central would be allowed?

MILLER I talked to the Traffic Engineer this morning, and he did not give me the exact distance, but he knows that it will violate the Access Management Policy. He did indicate that since they are willing to close one access and end up with only one access he will work with them.

FOLGER I talked with Paul Gunzelman, the Traffic Engineer. He would prefer that we be as close to across the street from Bristol as we can be, and we are willing to do that.

**MOTION:** Approve with the condition that the entrance and exit be on Central, and there be no access to Ellson; also include the three conditions stated on page 5 of the staff report.

**MITCHELL** moved, **MARNELL** seconded the motion.

GISICK In staff's recommendation page 5, Condition #1-3, is staff thinking that it is not necessary to allow access to Ellson?

MILLER His motion says that they will not be allowed access onto Ellson.

GISICK No, I just meant staff did not make that as a recommendation. Is staff feeling that is not necessary to require them to enter and exit onto Central?

MILLER Frankly, I did not think I could get that approved, but since it is here we will support the motion.

JOHNSON How many residential lots are east of this?

FOLGER That is one lot, and it fronts Central and we do have a letter in support from that owner.

**SUBSTITUTE MOTION:** Approve subject to the staff recommendations and Conditions #1-3 on page 5 of the staff report, and allow access to Ellson as it shows on the site plan.

**JOHNSON** moved, **GISICK** seconded the motion.

DOWNING The vacuums are still in violation of being in the setback?

JOHNSON I don't think they can be there?

MILLER His site plan will have to be amended if OCI determines that they are a structure, which they have been doing. He will have to vacate the building setback or redesign the site plan.

MILLER I want to remind the Planning Commission that staff is not recommending approval of this request. We are saying that if you do, we will support Commissioner Mitchell's motion.

GISICK I would like to clarify on the substitute motion, is that motion to accept the three conditions that staff had?

JOHNSON Yes.

BISHOP I am not going to support either motion. It has not been that long since this went through the whole public process for the CUP and Protective Overlay. I believe a longer period of time should lapse before we conclude that items listed in the Protective Overlay are not workable.

JOHNSON I want to comment I do not know the owner of this car wash, but I do visit the one out west periodically. It has one access to it, and I think if we had a way to have to access it would work better. Secondly, I know at one time when it first opened I think the water line broke and he was chipping ice on his approach so I know he will do what is right, and it is not just a smoke screen.

MARNELL I am going to oppose the substitute motion, and I don't want traffic to go out on that small street. That whole area is changing.



**SUBSTITUTE MOTION fails, (4-5-1). (MITCHELL, BISHOP, ALDRICH, WARNER, MARNELL, opposed. MCKAY abstains.)**

**MOTION CARRIES (7-2-1). (BISHOP and ALDRICH opposed. MCKAY abstains.)**

9. **Case No.: ZON2006-09** – Ron Mosher (Owner/Applicant) Request Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on property described as;

Beginning 972.45 feet South of the Northeast corner of the Northeast Quarter, thence West 230 feet, thence South 94.7 feet, thence East 230 feet, thence North to beginning, except 40 feet for road, Section 20, Township 27, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located West of Tyler Road approximately 1/5 mile south of Central (535 N. Tyler).

**BACKGROUND:** The applicant requests a zone change from “SF-5” Single-family to “LC” Limited Commercial on a 0.41-acre unplatted tract located approximately 900 feet south of Central on the west side of Tyler Road. The subject property is currently developed with a single-family residence. The applicant proposes to convert the home to a small retail shop.

The surrounding area is characterized by commercial and multi-family residential uses with two single-family residences (including the subject property) remaining in the area. With the exception of these single-family residences (which are zoned “SF-5” Single-family), all of the property surrounding the site is zoned “LC” Limited Commercial. However, the residential lot to the north was approved for a rezone to “LC” Limited Commercial on October 19, 2000, subject to platting in one year. There has been a series of plat extensions granted with a current deadline of May 14, 2007. The property immediately west of the site is developed with apartments. The properties north of the site are developed with vehicle repair, retail, restaurant and bank uses. The properties east of the site across Tyler Road are developed restaurant, self-storage warehouse, retail, bank, office, and car wash uses. The properties south of the site are developed with multi-family and retail uses.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: “SF-5”; “LC”	Single Family; Vehicle Repair, Limited; Retail, General; Restaurant; Bank/Financial Institution
SOUTH: “LC”	Multi-Family; Retail, General
EAST: “LC”	Restaurant; Warehouse, Self-service Storage; Retail, General; Bank/Financial Institution; Office, General; Car Wash
WEST: “LC”	Multi-Family

**PUBLIC SERVICES:** The site has access to Tyler Road, a four-lane arterial street with a traffic count of approximately 21,600 vehicles per day. Given the high traffic volumes on Tyler Road and improvements that will begin in the near future, planning staff will recommend the following conditions at the time of platting: limiting access to Tyler Road to one driveway; permitting cross-lot access to the property to the north if it develops with a non-residential use; and providing 50 feet of half-street right-of-way for Tyler Road. Public water and sewer currently serve the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Local Commercial” development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Given the existing screening from the multi-family use to the west and the likelihood that the single-family uses to the north and south will also convert to commercial use in the future, planning staff finds that the proposed use of the subject property meets these locational guidelines for commercial development.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The requested “LC” Limited Commercial zoning is consistent with the zoning of surrounding properties. The subject property is part of a small strip (three lots) of property zoned and used for single-family residences that is surrounded by “LC” Limited Commercial zoning in all directions.
2. The suitability of the subject property for the uses to which it has been restricted: Given the surrounding zoning and land uses and the traffic volumes on Tyler Road, the subject property is becoming less desirable for uses permitted under the existing “SF-5” Single-family zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The existing single-family residence is already significantly impacted by commercial uses in the area. The multi-family use to the west is buffered from the subject property by a landscaping and a screening fence located on the apartment’s property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is consistent with the Land Use Guide of the Comprehensive Plan, which identifies this area as appropriate for commercial uses.

5. Impact of the proposed development on community facilities: The recommended conditions of platting should mitigate the negative impacts of the proposed commercial uses on the ability of Tyler Road to carry traffic through the area.

**MOTION:** To approve subject to staff recommendation.

**MITCHELL** moved, **ALDRICH** seconded the motion, and it carried (10-0).

10. **Case No.: CON2006-06** – City of Wichita, Property Management, c/o John Philbrick (applicant) Request Conditional Use to permit a sanitary sewer lift station on property zoned “SF-5” Single-family Residential on property described as;

That part of the N/2 of the NE/4 of Sec. 2, T27S, R1W of the 6th P.M., Sedgwick County, Kansas, described as commencing at the SE corner of said N/2; thence S 89 degrees 33’23” W along the south line of said N/2, 1553.07 feet for a place of beginning; thence N 40 degrees 29’13” E, 234.91 feet; thence S 49 degrees 30’47” E, 110.29 feet; thence S 00 degrees 26’37” E, 105.22 feet to said south line; thence S 89 degrees 33’23” W along said south line, 237.22 feet to the place of beginning. Generally located West of West Street, south of 29th Street North.

**BACKGROUND:** The applicant is seeking a Conditional Use permit to allow the construction of a major utility, which will be a sanitary sewer pump station with a force main. The proposed pump station is defined as a major utility, per Art.III, Sec.II-B, #13h & #13i of the Unified Zoning Code (UZC). A major utility is a Conditional Use in all zoning districts.

The subject site is currently unplatted. However, a plat has been submitted for approval (Emerald Bay Lift Station Addition, case #SUB2006-00016). The subject property is vacant and zoned “SF-5” Single-family Residential, as is adjacent property to the east, west and north, which is a municipal water utility lime disposal and recovery facility. The property to the south is zoned “SF-20” Single-family Residential and is in the process of being developed with single-family residential uses.

The proposed pump station will be located approximately 1,300 feet west of West Street. The access will be from Emerald Bay Drive. The facility will connect to the city’s sanitary sewer via a sanitary sewer force main, which will be extended to the site from a utility easement adjacent to the Emerald Bay right-of-way. The placement of this facility will assist in the northern expansion of the sanitary sewer system and is being built at this time to specifically serve the Emerald Bay development.

The pump station will be on a site approximately 40-foot X 50-foot, which will be enclosed within a 6-foot to 8-foot tall concrete fence. A mechanic will visit the site every day between 7:30 AM and 4:00 PM. The average visit will be less than 30-minutes. The generator will run for approximately 30-minutes, once a week (not on weekends) around 1:00 PM. It is proposed that the mechanic will park in front of the enclosure.

**CASE HISTORY:** The site is currently unplatted. However, a plat has been submitted (Emerald Bay Lift Station Addition, case #SUB2006-00016) in conjunction with this Conditional Use request. There is no other known case history for the subject property.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“SF-5”	Water utility lime disposal and recovery
SOUTH:	“SF-20”	Vacant
EAST:	“SF-5”	Water utility lime disposal and recovery
WEST:	“SF-5”	Water utility lime disposal and recovery

**PUBLIC SERVICES:** The site has access to Emerald Bay Drive. All other necessary services will be provided with the development of the site.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Functional Land Use Guide identifies this area as “urban residential.” The pump station is a public facility classified as a major utility. Major utilities are needed to provide the general public with electricity, gas, heat, steam, communication, rail, transportation, water, sewage collection and other similar services. The proposed pump station will help provide efficient service to the surrounding area. A major utility is permitted as a Conditional Use in all zoning districts.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the site being platted within one year and the following Conditional Use restrictions:

- The applicant shall obtain all permits necessary to construct the sanitary sewer pump station, prior to the operation commencing.
- The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- The zoning, uses and character of the neighborhood: The character of the surrounding area is mostly vacant, however the tracts to the south are in the process of being developed with single-family residential uses. The properties surrounding the subject property are zoned “SF-5” and “SF-20.” The proposed use will serve as an infrastructure support facility for the existing and future nearby residential development.
- Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on remaining residentially zoned properties in the area should be minimized by the conditions of the Conditional Use, including

landscape buffering requirements and limitations on noise, lighting, and other activities. The Water and Sewer Department has indicated that the biofilter in the vent stack an effective method of odor control.

3. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would force the applicant to find another location. The sanitary sewer pump station is necessary to provide expanded infrastructure support to the area. Expansion of the sewer system into the surrounding area will allow for less dependence upon private septic systems.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wichita Land Use Guide identifies this area as "Urban Development Mix" and is within the "Wichita 2030 Urban Growth Area." The "Plan" contains an objective that states the community is to "promote the development of a comprehensive set of sanitary sewer systems that provide the most economic and efficient service possible." The Water and Sewer Department has identified this site as an efficient site for providing service to the surrounding area. Given the aforementioned factors, this proposal is consistent with Comprehensive Plan recommendations.
5. Impact of the proposed development on community facilities: The proposed pump station will increase the applicant's ability to provide adequate services to the area. There are no discernable negative impacts on community facilities.

**MOTION:** To approve subject to staff recommendation.

**MITCHELL** moved, **ALDRICH** seconded the motion, and it carried (10-0).

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11. **Case No.: DER2006-00005** – Request Amendment to The April 19, 2001 Edition of the Wichita Sedgwick County Unified Zoning Code to define "Farmers Markets," specify supplementary use regulations for Farmers Markets, and add Farmers Markets as an allowable use in the "LC" Limited Commercial, "OW" Office Warehouse, "GC" General Commercial, "IP" Industrial Park, "CBD" Central Business District, "LI" Limited Industrial and "GI" General Industrial zoning districts

**Background:** A request for regulatory changes to allow outdoor farmers markets in LC Limited Commercial zoning districts for more than two days per month has been made to at least one City Council Member. There is apparent interest among other City Council Members to define, guide and/or promote the direction and/or regulation of farmers markets.

At two recent City Council workshops, Council asked MAPD and OCI staff to present information on both current and suggested regulations for outdoor farmers markets. During the workshop presentation on February 14, 2006, Council requested that staff present the farmers market item to District Advisory Boards (DABs) for additional review and comment. Staff recently presented the draft proposals to the DABs and requested DAB feedback and public input. The proposed amendments have incorporated this input. The DAB memos and DAB summaries are attached.

**Analysis:** Farmers markets are not specifically defined or regulated by either the Wichita-Sedgwick County Unified Zoning Code (UZY) or by City of Wichita "miscellaneous sale" or "transient merchant" licensing ordinances. Therefore, it requires UZY amendments and a new licensing ordinance to address this issue. Per current UZY requirements, outdoor farmers markets are regulated as "outdoor business promotion and/or sales" (Sec. III-B.e.4). "Outdoor business promotions and/or sales" are limited in the LC Limited Commercial district to not more than two days per month. In less restrictive zoning districts, farmers markets may occur for an unlimited number of days (provided certain other required City sales and/or vendor/business licenses are obtained).

General direction provided by the City Council with respect to outdoor farmers markets includes the following:

- Should be defined and regulated in the UZY, and additionally controlled through local licensing
- Should focus primarily on agricultural products grown or raised by local or regional farmers
- Should allow for sale of home crafts, handicrafts and certain home-baked and prepared foods
- Should allow for some transient merchant vendors and other transient/mobile food vendors
- Should be allowed for more than two days per month in the LC zoning district (maximum of five days per month is suggested)

The proposed UZY amendments define "Outdoor Farmers Market", establish minimum conditions/requirements for outdoor farmers markets and operation, and restrict outdoor farmers markets to no more than five days per month in all zoning districts where they will be allowed (LC, OW, GC, CBD, LI and GI). The proposed amendments have been written so that they can apply to both the City and County if they choose to adopt them and associated licensing provisions.

**Recommendation:** Based upon information available prior to the public hearing, staff recommends the proposed amendments to the UZY be APPROVED.

This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: The proposed amendments allow a use that is comparable in intensity to other uses allowed in the subject zoning districts (LC, OW, GC, IP, CBD, LI, GI). The farmers' market use, as proposed, is an accessory use, which by definition is subordinate to and supportive of the principal use. Farmers markets would only be allowed in the least restrictive zoning districts as an accessory use to the most intense land uses allowed by the UZY. Due consideration was given to intensity of use at the time of zoning district approval. Therefore, the zoning

combined with the licensing process should ensure that farmers markets are compatible with the zoning, uses and character of the neighborhood in which they are proposed.

2. The suitability of the subject property for the uses to which it has been restricted: A property is currently restricted from the farmers market use because of a lack of definition of the term "farmers market" and suitable development standards for such a use, not necessarily because of an inherent characteristic of any given parcel. The level of analysis that occurs in a zoning case and the findings for each approved case should adequately guarantee that any property zoned LC, OW, GC, IP, CBD, LI, or GI is suitable for the farmers market use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Since a farmers market is an accessory use, any property zoned to allow a farmers market would already be supporting a use that is of similar intensity. Additionally, a farmers market would be a temporary use, which must be appropriately licensed. The process of obtaining a license includes submitting a site plan to the Zoning Administrator. Possible negative impacts such as signage, site design, parking, ingress and egress, etc. are addressed in the site plan. Given these factors, allowing a farmers market should not detrimentally affect nearby property. However, there may be cases where a farmers market is approved for an LC zoned property that moves an outdoor activity closer to residential zoning than had been previously allowed.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Farmers markets have become a popular way to deliver fresh produce and other regionally grown agricultural products to consumers. Amending the UZC at this time to allow farmers markets will likely have a positive impact on the local economy and give the public an outlet to obtain fresh, healthy and affordable agricultural products and foods.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan has identified areas that are suitable for commercial and industrial development. Each zoning request is reviewed against criteria specified in the Comprehensive Plan. Therefore, any licensed farmers market should be in conformance with the comprehensive plan to the extent that the zoning is in conformance with the comprehensive plan.
6. Impact of the proposed development on community facilities: The Zoning Administrator will consider traffic issues during the licensure process, as a site plan is required. Additional traffic would be anticipated during the operation of the farmers market. Otherwise, as an accessory use, farmers markets should not have a negative impact on any other public facilities.

**Attachments:**     **No. 1** - Proposed UZC Amendments Regarding Farmers Markets  
                          **No. 2** - DAB III & IV Memo  
                          **No. 3** - DAB I, II, V & VI Memo  
                          **No. 4** - DAB Summary

MARNELL How come this Item did not come before the Advanced Plans for review and approval?

MILLER This did have extensive public review. It went before all the DAB's and it has had several reviews. I am assuming that since this was directed by the City Council, there were specific groups that already had interest in this, and that it was just an oversight.

SCHROEDER There was a timing issue too. City Council wanted this done by this month or early next month.

MCKAY How long did it take for it to get through the DAB's?

MILLER We doubled up and went to all of them in the same week.

MCKAY You should have asked the Advanced Plans to review during the same week.

MARNELL I have a question for the legal department, because I wonder if this will actually pass because it is requiring the produce that is sold here to be grown in the State of Kansas.

DUNAKY It does not. It requires that there be one or more farmer or grower at the market from Kansas.

BISHOP I am assuming that where it says more than one Kansas farmer that means your average farmer can put his produce out, and not have to go through this process because it is just the one guy?

DUNAKY They would fall under different licensing requirements and zoning.

DOWNING Will there be different rules for markets on City owned property?

DUNAKY Yes, the city will be able to specify and control those directly. Staff did work with the operators of the existing markets to make sure that we had an arrangement that worked for them as well.

BISHOP About the exceptions of City owned property, how would this impact the Sedgwick County extension market?

DUNAKY That is your answer. That is County owned property.

BISHOP Well, it is County owned but it is still within the City of Wichita limits.

DUNAKY It is not owned by the City of Wichita.

HILLMAN What about the two-day rule when it rains?

DUNAKY They will be able to operate no more than five (5) calendar days per month.

HILLMAN You couldn't do it Saturday and Sunday every weekend?

DUNAKY No.

HILLMAN Some weekends you could add up 10 days.

DUNAKY Typically they are on a specific day of the week, each week, this would allow them to operate on that day each week.

WARNER Are we expected to take action on this today and make a recommendation to them?

DUNAKY Yes. To answer Commissioner Marnell's question, legal staff has reviewed these amendments and recommended them.

HILLMAN What consequences are there if we don't approve this today so that it can go to Advanced Plans, what deadline are we missing?

DUNAKY It means Farmers Market would be able to operate only 2 days per month until it is addressed.

MILLER City Council could pull this forward with or without a recommendation from MAPC if they choose to.

MARNELL So the Farmers Markets that operate every weekend those have been in violation and just ignored?

SCHROEDER Which markets are you talking about?

MARNELL There used to be one in Cox's parking lot that operated every weekend before the City had their own land. They moved it over. It is now exempt.

SCHROEDER That is before Old Town? There might not have been zoning regulations at that time that applied. The Old Town Market is allowed to operate in "LI" Limited Industrial and they are allowed to operate those two days a month.

**MOTION:** To approve subject to staff recommendation.

**DOWNING** moved, **BISHOP** seconded the motion, and it carried (8-1) **MARNELL opposed.**

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The Metropolitan Area Planning Department informally adjourned at 4:40 p.m.

State of Kansas)  
Sedgwick County) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)